

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO
COMPANY, et al.,

Defendants.

Miami-Dade County Courthouse
Miami, Florida
Thursday, 9:05 a.m.
June 22, 2000
PHASE II

TRIAL - VOLUME 556

The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit Judge,
pursuant to notice.

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APPEARANCES:

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SUSAN ROSENBLATT, ESQ.

On behalf of Plaintiffs

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DAN WEBB, ESQ.

BRADLEY LERMAN, ESQ.

On behalf of Defendant Philip Morris

DECHERT PRICE & RHOADS

WILLIAM DODDS, ESQ.

On behalf of Defendant Philip Morris

COLL DAVIDSON SMITH SALTER & BARKETT

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On behalf of Defendant Philip Morris

ZACK KOSNITZKY

STEPHEN N. ZACK, ESQ.

On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER

R. BENJAMINE REID, ESQ.

DOUGLAS J. CHUMBLEY, ESQ.

On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE

JAMES JOHNSON, ESQ.

JAMES YOUNG, ESQ.

DIANE G. PULLEY, ESQ.

On behalf of Defendant R.J. Reynolds

KING & SPALDING

GORDON SMITH, ESQ.

On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY

KELLY ANNE LUTHER, ESQ.

On behalf of Defendants Liggett Group

and Brooke Group

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APPEARANCES (Continued)

SHOOK HARDY & BACON
KENNETH J. REILLY, ESQ.
WILLIAM P. GERAGHTY, ESQ.
On behalf of Defendant Brown & Williamson
JAMES T. NEWSOM, ESQ.
On behalf of Defendant Lorillard
GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL
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On behalf of Defendant Lorillard
MARTINEZ & GUTIERREZ
JOSE MARTINEZ, ESQ.
On behalf of Defendant Dosal Tobacco Corp.
and Tobacco Institute
KASOWITZ BENSON TORRES & FRIEDMAN
AARON MARKS, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group
ADORNO & ZEDER
ANTHONY UPSHAW, ESQ.
On behalf of Defendant Brown & Williamson
DEBEVOISE & PLIMPTON
JOSEPH P. MOODHE, ESQ.
On behalf of Defendant Council for Tobacco Research
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Cross by Mr. Rosenblatt	55353

E X H I B I T S

PLAINTIFFS'	OFFERED	ADMITTED	FOR ID
EXHIBITS	PAGE	PAGE	PAGE

None

E X H I B I T S

DEFENDANTS'	OFFERED	ADMITTED	FOR ID
EXHIBITS	PAGE	PAGE	PAGE

None

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(Whereupon, the following proceedings were had:)
THE COURT: Good morning, all. Have a seat,
please.
Okay. Well, what do we need to discuss?

5 MR. WEBB: Your Honor, we have, I think,
6 pending the two defense motions that we argued late
7 yesterday on Mr. LeBow. The first motion was the
8 motion to limit his testimony so that he's not allowed
9 to repeat --

10 THE COURT: Well, that's going to be
11 difficult. That's going to be difficult. As I
12 understand -- and I read the transcript portions that
13 you gave, not the full transcript, but it is true that
14 he went into some of the subject matter rather deeply
15 in those transcripts.

16 I don't know what they intend to really put
17 him on for, but he has discussed the settlement, he has
18 discussed his role in the settlement, he's discussed
19 his feelings about why he did what he did. I mean,
20 he's already done that. The jury has already heard
21 that. It's not as if he said it to somebody else. The
22 jury has already heard it.

23 While I don't want to put him on the stand
24 and have him repeat all of this, there are certain
25 portions you can't help but get into.

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1 MR. MARKS: We're not going to dwell on
2 the -- why he did the settlement at all.

3 As far as --

4 THE COURT: If that light is in your eyes,
5 turn it off.

6 MR. MARKS: Yes, I think it is.

7 THE COURT: Yes. Thank you.

8 MR. MARKS: As far as his motive for going
9 into the settlement, it's going to be very brief.
10 We're not going to go --

11 THE COURT: Let's put it this way. If we
12 preface the remarks by saying he's already testified
13 and he's testified before this jury about what occurred
14 at the settlement agreements and his motivation and all
15 that sort of business, they've heard about it. What
16 more do you want him to say?

17 MR. MARKS: Well, what I'm going to ask him
18 about was: When these lawsuits were filed, what is it
19 that caused you -- what was it that caused you to
20 settle? Like one or two questions.

21 MR. WEBB: Well, the only problem with that,
22 Your Honor, is that that could lead to a 20-minute
23 narrative answer.

24 I went back and looked at the transcript last
25 night, again, because I had filed this motion not

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1 knowing exactly what they were going to do. But last
2 night when -- when counsel told you that what he wanted
3 to do is just kind of go through why Mr. LeBow entered
4 into these settlements, when I went back and looked at
5 the transcript, Mr. LeBow testified in great detail how
6 the attorneys general settlement agreements actually
7 came about. He talked in great detail about how he
8 hired new lawyers. They looked at documents for six
9 months.

10 They convinced Mr. LeBow that there had
11 been -- that people had not been telling the truth

12 about causation and addiction, and he discovered that;
13 and then he went and started meeting with the attorneys
14 general and he had these extensive negotiations that he
15 described in detail in his testimony --

16 THE COURT: Well --

17 MR. WEBB: -- and that -- how the documents
18 were so devastating.

19 I mean, it wasn't like he touched upon that.
20 He described it in great detail.

21 THE COURT: He's not going to go into great
22 detail at this stage at all.

23 MR. MARKS: That's exactly right.

24 THE COURT: But he's got to say something in
25 his defense and he's entitled to say something in his

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1 defense, just as you folks came in and had to say a few
2 things in your defense through one or more witnesses.
3 I think he's entitled to say that again, even though
4 the subject matter was covered before. A lot of that
5 took place through cross examination of plaintiffs'
6 witnesses and cross examination of your own.

7 Of necessity, you're going to have to get
8 into some of that, so they can put it in context, as to
9 why he's here today. He's here today to plead his case
10 and his case is: Please, these are the reasons I did
11 what I did. I want you to understand it so that when
12 you make a decision affecting me, that I feel
13 comfortable you understand my motivation.

14 I don't have any problem with that. So, I'm
15 going to go ahead and let it go. If I think you're
16 going too far, I'll stop him. But it's true, that
17 there is testimony about all of that. That is true.

18 MR. MARKS: I assure you, we're not going to
19 dwell on that.

20 THE COURT: I'm sure there are other matters
21 you are going to talk about.

22 MR. MARKS: Yes. Absolutely.

23 MR. REID: May I ask one question for
24 clarification? For instance, Mr. LeBow's views on
25 causation and addiction haven't changed since Phase II.

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1 Is he going to give his views about causation,
2 addiction, youth marketing?

3 THE COURT: It may come up and he might say:
4 "I haven't changed my mind about it."

5 MR. REID: We would object. If there's been
6 no change, then it's repeating what he said before
7 about those subjects.

8 THE COURT: He may not say it. He may say,
9 "My views are the same as you heard before," which is
10 perfectly all right. I don't know what he's going to
11 say.

12 MR. MARKS: Your Honor, on that point, the
13 various companies' views on causation and addiction
14 have become a critical part of this case; it would be
15 very prejudicial to Liggett if during this eight-week
16 period, the jury is able to hear how, in fact, all
17 these other companies may or may not have changed their
18 positions on smoking and health, and for Liggett not to

19 be able to put in --
20 MR. REID: Except he already did.
21 THE COURT: I don't know what he's going to
22 say.
23 MR. MARKS: All of the other companies did in
24 Phase I also.
25 THE COURT: We'll see where it goes, but I'm
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1 not going to let him get into a diatribe.
2 MR. MARKS: He's not.
3 THE COURT: The motion for severance.
4 MR. WEBB: Yes, Your Honor.
5 THE COURT: All right. Denied.
6 All right.
7 MR. ROSENBLATT: I guess it makes sense to do
8 this now, Judge. You know, my understanding is that
9 after Mr. LeBow, we're going to get into the video of
10 Dr. Burns; but we received a letter from Mr. Webb,
11 where they're listing, you know, three other witnesses,
12 actually four, but I'm -- I'm only going to talk about
13 three. I'm not going to talk about Ellen Merlo at this
14 point.
15 THE COURT: Hold on one second. Let me get
16 that.
17 MR. ROSENBLATT: The title of this is: Engle
18 Florida Class Motion in Limine to Exclude Irrelevant
19 Defense Witnesses.
20 THE COURT: Yes. I have it here now.
21 MR. ROSENBLATT: Okay.
22 THE COURT: And there's only three people
23 named in that motion, correct?
24 MR. ROSENBLATT: Right.
25 THE COURT: Okay.

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1 MR. ROSENBLATT: Witnesses Terry Tripp,
2 Robbie Fulford and Garth Reeves. We say they should be
3 stricken, since their testimony is legally irrelevant
4 and violates your order of April 17 and subsequent
5 rulings that you've made at various pretrial hearings.
6 The disclosures of these individuals reveal
7 that their testimony is inadmissible in its entirety
8 and would only delay this punitive damage trial.
9 Terry Tripp, for example, is a fabrication
10 technician at Brown & Williamson. We're told she's a
11 single mother and a union member.
12 Terry Tripp does not have a managerial
13 position, and based on your earlier rulings, may not
14 testify about plant shutdowns or hiring freezes, work
15 force attrition. These areas were addressed by
16 Mr. Brookes. It would be cumulative and repetitive.
17 There have also been three witnesses from
18 Brown & Williamson: Mr. Brookes; the youth smoking
19 prevention manager, Theresa Burch; and the Jaycees
20 representative, Megan Kelsey. So a fourth individual
21 is certainly not needed to, once again, address Brown &
22 Williamson's efforts to prevent youth smoking.
23 Then we get to Robbie Fulford. And we are
24 told in their disclosure -- I mean, as you know, Judge,
25 we did not take depositions of these people. We're

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1 told in Robbie Fulford's disclosure, he's a member of
2 Brown & Williamson's leaf purchasing department.

3 His testimony is clearly cumulative of the
4 testimony already in evidence from Nick Brooks. As a
5 member of the leaf purchasing department, there's no
6 legal relevance to the impact, if any, on Robbie
7 Fulford, from the Master Settlement Agreement. You
8 know, he's not an expert on finance.

9 There has already been testimony about the
10 so-called renegade companies, over our objection, and
11 it would be extremely prejudicial to inject issues as
12 to the quality of other cigarette brands that are not
13 defendants in this case.

14 I mean, that would require that the other
15 cigarette companies appear on rebuttal and say their
16 product is not so terrible. It's a side issue that
17 really has no bearing in the punitive damage phase of
18 the case.

19 Garth Reeves is a -- I think a name which is
20 familiar to Miamians. He's been around a long, long
21 time. And although he's a prominent member of the
22 South Florida African-American community, he simply has
23 no relevant evidence to present, you know, to this
24 jury.

25 He was the long-time publisher, and I believe
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1 his son now runs the newspaper, the Miami Times, and
2 this Court has already advised defense counsel that the
3 proposed testimony of Mr. Reeves is irrelevant in this
4 case. And we simply contemplated that he was withdrawn
5 as a witness. And there's nothing that has been
6 disclosed that is remotely relevant to any issues in
7 this phase of the case.

8 It's never been the position of the class
9 that it is inappropriate to use minority models in
10 advertising. This is a nonissue, created by the
11 defense, to introduce clearly inadmissible testimony.

12 Now, tobacco company advertising generates
13 income for all magazines and newspapers that publish
14 such advertising, obviously including the Miami Times.
15 It would be highly prejudicial and of no probative
16 value for the former publisher of the Miami Times to
17 tell the jury that the Miami Times is dependent upon
18 these advertising dollars. And you've said that you're
19 not going to allow this kind of testimony from third,
20 outside parties.

21 And there's no relevance in this punitive
22 damage trial about Brown & Williamson's community
23 service, if any, because you've already ruled that
24 evidence of that kind of community service is
25 inadmissible, and you've been consistent on that.

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1 So these three witnesses really should be
2 excluded in their entirety.

3 And I would simply remind the Court that, you
4 know, we've had a total of six witnesses on our side of

5 the case, and Your Honor excluded about six or seven
6 more witnesses that we had listed, on the basis of
7 repetition and cumulative and not being appropriate for
8 the punitive damage phase of the case.

9 MR. UPSHAW: Good morning, Your Honor.
10 Your Honor, first, I'll talk about the
11 witnesses in the order that Mr. Rosenblatt has
12 discussed, to make it easier for us here.

13 Terry Tripp is absolutely critical to the
14 Brown & Williamson defense. Ms. Tripp will come and
15 testify. She's a very short witness, and it's critical
16 that Brown & Williamson has her testify in this case,
17 specifically because we purposely did not ask
18 Mr. Brookes questions about the impact of Brown &
19 Williamson's financial condition on, specifically,
20 employees and union members in detail.

21 The questions that were asked Mr. Brookes
22 were similar to the questions that were asked with
23 regard to youth smoking, and as we say, we would bring
24 another witness for youth smoking, and we knew we had
25 Ms. Tripp, a second witness, to talk in detail about

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1 those, from the perspective of someone who is an
2 employee and a union member.

3 Now, she's not only a union member, she's a
4 person who works at the Macon plant. She's a
5 spokesperson for all of the employees at the Macon
6 plant, and has been asked by the union to come and
7 speak.

8 Now, the union is part of Brown & Williamson;
9 the workers are part of Brown & Williamson. She's
10 there as a representative. She does hold a position,
11 although not managerial. She holds a position of
12 prominence at the Macon plant, specifically because the
13 union has asked her to come and speak, and her position
14 in the union requires her to come and speak.

15 You told me earlier that you didn't want the
16 privates coming to speak. Well, Ms. Tripp is not one
17 of the privates, Judge. She's one of the people who
18 will know what is going on at the Macon plant, and we
19 specifically did not ask Mr. Brookes those questions so
20 that she could come and testify.

21 Furthermore, Mr. Brookes really wouldn't be
22 able to competently testify as to the issues that
23 Ms. Tripp will testify to. She's not a long witness.
24 I doubt if she'll take 20 minutes, at best.

25 THE COURT: What's she going to say?

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1 MR. UPSHAW: She will discuss -- she will
2 discuss the down days and weeks at the plant. She will
3 discuss the extended holidays that have occurred at the
4 plant.

5 THE COURT: As a result of what?

6 MR. UPSHAW: As a result of the financial
7 condition of Brown & Williamson.

8 She will also discuss how that financial
9 condition impacts the employees and union members --

10 THE COURT: Since when?

11 MR. UPSHAW: -- of Brown & Williamson. Since

12 1997, to the current position. Not how it was ten
13 years ago, whatever. She's giving you what's happening
14 currently, today.

15 And she will -- we have tailored her
16 testimony. We know what your rulings are. That's why
17 her testimony has become shorter and shorter and
18 shorter, even shorter since the interrogatories were
19 answered, because we have now tailored what can be
20 acceptable and what can't be acceptable.

21 She will discuss how there's reduced
22 equipment use, how equipment is disappearing, how
23 there's a hiring freeze, how there is a work force
24 reduction through attrition.

25 THE COURT: Why in the world wouldn't you
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1 have brought in somebody, such as a personnel director,
2 to talk about things like that?

3 MR. UPSHAW: Because she is a person that has
4 been designated by the workers and by the union
5 officials, the top union people, the union boss, to
6 come in and talk about that, not a -- not someone who
7 is in management who is going to talk from that level.

8 She's going to talk from somebody who is
9 there every day. She's not going to discuss how she's
10 a single mother and all this kind --

11 THE COURT: But she doesn't know the policy
12 of the company, vis-a-vis what they're going to do with
13 the employees.

14 MR. UPSHAW: Yes, she does.

15 THE COURT: Is she on an advisory board that
16 talks to management?

17 MR. UPSHAW: She's on the union. Union talks
18 to management.

19 THE COURT: Is she one of the people that
20 goes to meetings with management?

21 MR. UPSHAW: She's one of the people that
22 talks between union and management. She knows. That's
23 why she's been designated. That's why Mr. Brookes
24 didn't testify to that.

25 THE COURT: Okay.

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1 MR. UPSHAW: Okay. Now, Your Honor,
2 truthfully, we went back and looked. We got
3 Mr. Rosenblatt's motion. I went back and reviewed
4 Mr. Fulford's testimony, and we're prepared to withdraw
5 Mr. Fulford.

6 THE COURT: All right.

7 MR. UPSHAW: Okay. So we don't have to
8 discuss him. His testimony may be cumulative. We're
9 prepared to withdraw him.

10 Now, with regard to Mr. Reeves, the record
11 requires that his testimony be allowed to be heard by
12 this jury in this phase of the trial. And I'd like to
13 show you why.

14 The testimony of plaintiffs' expert,
15 Dr. Davis, was as follows. This is Page 51693 of the
16 trial transcript. He was going through magazines and
17 he was asked about a magazine called Latina. And his
18 answer was: "That's right. I think this is an example

19 of the cigarette companies targeting minorities,
20 advertising in minority publications."
21 And then he goes on. And I think the Court
22 remembers this testimony.
23 At another point he says -- goes to a
24 magazine called Black Men. His answer: "These are
25 all, by the way, from May 2000. I just picked these up
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1 in the store a couple weeks ago. And this one is
2 obviously like Latina, which targets Hispanic females.
3 This is targeting black men, primarily."
4 We go on from there. Not only was it open
5 during the plaintiffs' case, but Mr. Rosenblatt brought
6 it up with his cross examination of Mr. Brookes.
7 I didn't highlight these, but this is from
8 Page 54551. Question: "Do you admit that Brown &
9 Williamson over the past -- over a period of decades
10 has targeted women and minorities to increase the
11 smoking of those groups through massive advertising and
12 promotion, resulting in an enormous increase in disease
13 and death in those targeted groups?"
14 His answer: "Well, I think you put it in a
15 very, very pejorative, negative sense."
16 Of course, Mr. Rosenblatt comes back with:
17 "You bet."
18 So this is not something that's being a
19 nonissue in this portion of the case.
20 He went on with Mr. Schindler. I'll just
21 read you Mr. Schindler.
22 Mr. Schindler was from the transcript Page
23 54831: "Do you admit that your company over a period
24 of decades has targeted women and minorities, to
25 increase the smoking of those groups through massive
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1 advertising and promotion, resulting in an enormous
2 increase in death in those targeted groups?"
3 Mr. Reeves is the prime person in a position
4 to respond to those allegations.
5 Plaintiffs' witnesses and the questions that
6 he asked have opened the door to this section. He's
7 only being called to respond specifically to the
8 allegations in this phase of the case. He's not being
9 called to discuss what publishers do. He's not going
10 to be called to discuss the harm to publishers, as
11 you've already told us.
12 We're going to follow the Court's order.
13 THE COURT: But what is he going to say?
14 MR. UPSHAW: What he's going to say
15 specifically is that the allegations that plaintiffs
16 have made, that the tobacco industry continues to
17 target minorities in their publications, and that that
18 is a bad thing, is not correct; that it is not true.
19 THE COURT: He's going to say what, that they
20 do target black people, but it's a good thing?
21 MR. UPSHAW: He's going to say there's no
22 targeting involved; that there is marketing to segments
23 of our community, and that marketing is a good thing.
24 THE COURT: How does he know what the
25 position of the company is?

1 MR. UPSHAW: He's not talking about the
2 position of --

3 THE COURT: All he can tell you is from the
4 other side of the coin, and he can testify that he runs
5 a magazine or a newspaper, or whatever, which is geared
6 to the black community, Afro-American community, and
7 they have advertising in there from tobacco companies
8 of certain types of cigarettes, which are sold
9 predominantly in that community, and that he feels it's
10 better to have that kind of advertising in his
11 newspaper than advertising in a different area of town.
12 Is that what he's trying to say?

13 MR. UPSHAW: That's one of the things he's
14 going to say.

15 And he also, from a plethora of wisdom and
16 knowledge of publishing and advertising in minority
17 segment newspapers, can tell this Court and this jury
18 that there has been no, quote, unquote, "targeting" in
19 the pejorative term that's been used.

20 THE COURT: He doesn't know that.

21 MR. UPSHAW: He does know that.

22 THE COURT: He can't know that.

23 MR. UPSHAW: Judge, he knows that.

24 THE COURT: No. He's only the recipient.
25 He's not the instigator of the program.

1 MR. UPSHAW: Yes, sir.

2 THE COURT: The targeting comes from the
3 instigator, not from someone like --

4 MR. UPSHAW: He knows it, Judge, from his
5 newspaper and his work on a national level with other
6 publishers.

7 THE COURT: I'm not going to buy it.

8 MR. UPSHAW: He's also able to testify that
9 the use, as you've heard, of minority advertising,
10 okay, does not increase in his community the level of
11 disease and death in, quote, unquote, "those targeted
12 groups," as was the question by Mr. Rosenblatt.

13 He has a very limited testimony. He's here
14 to address just that point, and he's here directly in
15 response -- directly in response to that.

16 Now, if we're not allowed to put on
17 Mr. Reeves, then the jury will be left with the opinion
18 that that is wrong. Okay.

19 He can say that all advertisers advertise to
20 segments, not just tobacco companies. He can testify
21 that it's not just tobacco companies who provide
22 minority advertising, specifically for minorities.
23 That he can testify to.

24 This jury has been left with -- Judge, this
25 jury has been left with an opinion, through the

1 questions of Mr. Rosenblatt and through the plaintiffs'
2 own expert, that today, the tobacco companies are doing
3 something wrong, and that, we need to respond to.

4 THE COURT: Okay.

5 MR. UPSHAW: He's trying to say we're doing
6 something wrong. If we can't respond to that, Judge,
7 then they're going to be left with that impression,
8 that that's a bad thing. That's why we're trying to
9 respond. And that's what Mr. Reeves will respond to.
10 So he is limited.

11 MR. ROSENBLATT: All Mr. Reeves knows is that
12 the tobacco companies advertise and have advertised
13 over the years in his newspaper. He's not in a
14 position to know what their motives are.

15 Now, the targeting issue was essentially a
16 Phase I issue. It's obvious the reason Mr. Reeves is
17 being brought in here. The likelihood is that, you
18 know, several -- several -- probably several jurors are
19 fully aware of his name, are fully aware of this
20 newspaper, and he simply -- he simply has nothing to
21 offer.

22 And Mr. Upshaw says he is -- Mr. Reeves is
23 going to say something that the advertising doesn't
24 increase the death rate and the disease rate. How in
25 the world would he know that?

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1 THE COURT: No. That's not the issue. The
2 only thing that he may possibly be able to testify
3 about is that there are certain products that are sold
4 to certain elements of the community; certain products
5 that are sold to Latin people that other folks don't
6 buy because they're more involved with the culture of
7 the Latins; certain products that are used more often
8 by Afro-Americans that nonAfro-Americans don't buy,
9 because of the culture of that group in society, and
10 that this is the outlet for them to advertise in an
11 Afro-American community. There's nothing wrong with
12 that.

13 So if he wants to testify about that, that's
14 fine, just to eliminate this concept that it's wrong to
15 advertise to a certain particular group in a paper.
16 And that's the limit of what I'm going to allow him to
17 say. Other than that, I don't think it's relevant or
18 material.

19 MR. UPSHAW: We'll take your instruction,
20 Judge.

21 THE COURT: All right.

22 MR. MARKS: Your Honor, just a scheduling
23 issue. We're not going to -- Liggett is not going to
24 be calling Attorney General Butterworth as a witness in
25 this case.

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1 With respect to Dr. Burns --

2 THE COURT: If you want to step over that
3 way.

4 MR. MARKS: Yes. I got the light again.

5 With respect to Dr. Burns, we're going to be
6 serving our designations of Dr. Burns this afternoon.
7 We believe, although we're not certain, there's going
8 to be a little bit of work to do with respect to those
9 designations.

10 THE COURT: Okay. Give me something to work
11 with, and then I'll be able to give you some sort of a

12 ruling.
13 MR. MARKS: We will file our designations
14 this afternoon.
15 THE COURT: Okay. Now --
16 MR. ROSENBLATT: Well, is there any other --
17 so, just in terms of the scheduling, if we finish with
18 showing, you know, Dr. Burns' video, so who would be
19 the next witness?
20 MR. WEBB: Well, we have three -- we have
21 Merlo -- a combination of Merlo --
22 MR. ROSENBLATT: Give me the order.
23 MR. WEBB: Well, I don't -- I haven't
24 talked --
25 MR. UPSHAW: We haven't discussed the actual
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1 order.
2 MR. WEBB: But it's Tripp.
3 MR. ROSENBLATT: No. I'd like to know.
4 MR. WEBB: Well, I --
5 MR. ROSENBLATT: Susan is working on this, so
6 I'd like to be able --
7 THE COURT: Well, Tripp's testimony is going
8 to be short because she's limited to what she's going
9 to say.
10 MR. ROSENBLATT: Very short.
11 THE COURT: The only thing is her
12 importance -- her knowledge of the innerrelationship
13 between the working force and management, and how there
14 have been changes, if any, that pertain to the working
15 force that she is personally knowledgeable of, in her
16 role as spokesperson for union management, union
17 employee, however that works out. But that's rather
18 limited. She's certainly not talking about her own
19 personal role as a single mother, things of that
20 nature.
21 MR. WEBB: Judge, we'll be able to get on --
22 THE COURT: That's rather short.
23 MR. WEBB: I will be able to tell
24 Mr. Rosenblatt, it seems to me, if we finish Mr. LeBow
25 today, which I think is likely, we have witnesses
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1 flying in here now and will be here. It will be a
2 combination -- Merlo -- I don't know what order. But
3 Tripp and Reeves are very short. You can tell by the
4 ruling.
5 MR. ROSENBLATT: Right.
6 MR. WEBB: And then Merlo.
7 MR. ROSENBLATT: Right.
8 MR. WEBB: Those will be the three witnesses
9 tomorrow.
10 MR. ROSENBLATT: Tomorrow.
11 MS. LUTHER: Just to inject --
12 MR. ROSENBLATT: Merlo you're not planning --
13 because she is going to be a long witness, she's out of
14 town?
15 MR. WEBB: She's actually in town. We
16 thought Burns would be called, and Butterworth. So if
17 we run out of witnesses today, we run out.
18 MR. ROSENBLATT: Okay.

19 MR. WEBB: So Mr. Rosenblatt knows, Merlo,
20 Tripp, they'll go on tomorrow.
21 THE COURT: Let's talk about what's going to
22 happen next week. Are you going to be finished next
23 week?
24 MR. WEBB: Well --
25 THE COURT: Pretty close?
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1 MR. WEBB: Yes, I think we should be able to
2 finish by next week. I have to consult with counsel.
3 We've got some witnesses left, but we should finish
4 next week. I think that's realistic.
5 THE COURT: You should be working on the
6 usual: verdict form, jury instructions. I know it's
7 not as complicated as before, but there are some issues
8 to discuss on that.
9 MR. WEBB: We're working on that. We can set
10 a date certain by which both sides have to file
11 instructions. Next week, if you want. Pick a date.
12 Wednesday. I mean, I'll do whatever Your Honor wants.
13 We're working on them right now.
14 THE COURT: Let's shoot for tentatively on
15 Wednesday.
16 MR. WEBB: We'll have it.
17 THE COURT: Give or take. Whatever.
18 MR. WEBB: I think both sides should exchange
19 instructions on the same date, to be fair to each
20 other.
21 THE COURT: So we get something working,
22 anyway.
23 MR. ROSENBLATT: In terms of the cross
24 examination of Mr. LeBow, Dan, do we agree on this? My
25 understanding is that you -- you would cross him before
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1 I would?
2 MR. WEBB: No, that's not our understanding.
3 I mean, we've always followed plaintiff. And I'm not
4 even sure what -- I mean, until we see Mr. Rosenblatt's
5 cross, that's going to have an enormous impact --
6 that's been that way for each one of the witnesses so
7 far in this trial, that our follow-up cross has been
8 very limited, in light of the --
9 THE COURT: Well, I'm not so sure that's been
10 the system. It was a different system when they put on
11 a witness for cross, as to what order you had. And
12 then when you put on a witness, I usually ask defense
13 if they've got any cross for that witness, and then go
14 to the plaintiffs.
15 MR. WEBB: Actually, Your Honor, we've not --
16 at least during this phase --
17 THE COURT: I think that's the appropriate
18 way to do it, frankly, especially with Mr. LeBow, since
19 you folks want to cross Mr. LeBow.
20 MR. WEBB: Well, Your Honor, at least with
21 Brookes, Szymanczyk, Schindler and others, you've
22 turned to us after Mr. Rosenblatt finished, to see if
23 we had any cross examination, which has been pretty
24 limited with those three witnesses.
25 THE COURT: Well, generally, it wasn't very

1 much of anything. But I went back to you, or whoever
2 put the witness on, and asked for redirect.
3 But as far as cross is concerned, I think the
4 order would be they put on a witness, your side does
5 whatever it is you want to do with that witness, either
6 direct or cross, and then the plaintiff has an
7 opportunity to cross. Then they come back with
8 redirect.

9 MR. WEBB: Actually -- go ahead, Mr. Reid.

10 MR. REID: Go ahead.

11 MR. SMITH: Yes, Your Honor. With
12 Mr. Brookes, Mr. Rosenblatt did his lengthy cross
13 examination, eliminated most of what anybody else
14 wanted to ask, and indeed, after Mr. Rosenblatt, you
15 asked --

16 THE COURT: Well, I still think that's the
17 proper procedure to follow, so we'll do it this way.

18 MR. REID: Your Honor, may I just add one
19 thing? The problem is, given the unusual situation
20 with the clear adversity between the defendants, among
21 the defendants over here and Mr. LeBow, and the fact
22 that Mr. LeBow is more closely aligned with
23 Mr. Rosenblatt, whom he called in Phase I as his
24 witness, it's unfair not to give us an opportunity to
25 cross examine Mr. LeBow after he testifies, in effect,

1 in favor of Mr. Rosenblatt.

2 THE COURT: He's not testifying in favor --
3 he's not being called by Mr. Rosenblatt.

4 MR. REID: No, but he is -- but we know from
5 what he's testified to before, and the fact that he was
6 called as Mr. Rosenblatt's witness, that there's a
7 tremendous prejudice --

8 THE COURT: You all know what he's going to
9 say and you all know what you want to ask him.

10 MR. REID: We don't know what
11 Mr. Rosenblatt --

12 THE COURT: We're not playing games with
13 this. We know it's not that much different. So you've
14 prepared for him.

15 We'll take a short recess to find out if the
16 jury is ready.

17 (A brief recess was taken.)

18 THE COURT: All right. Get the jury out,
19 please.

20 THE BAILIFF: Bringing in the jury. Jurors
21 entering the courtroom.

22 (The jury entered the courtroom.)

23 THE COURT: Good morning, folks. Be seated.

24 THE JURY PANEL: Good morning.

25 THE COURT: How is everybody?

1 THE JURY PANEL: (Responds affirmatively.)

2 THE COURT: Usual questions about what
3 happened over the night. Did anybody see anything,
4 hear anything, been exposed to any information from any

5 source whatsoever about this case or any of the issues?
6 THE JURY PANEL: (Responds negatively.)
7 THE COURT: All right. Everybody is here
8 with a free and unfettered mind?
9 THE JURY PANEL: (Responds affirmatively.)
10 THE COURT: As far as the decision of this
11 case?
12 THE JURY PANEL: (Responds affirmatively.)
13 THE COURT: Let's proceed, then. Call your
14 witness, please.
15 MR. MARKS: Liggett calls Bennett LeBow.
16 Thereupon:
17 BENNETT S. LeBOW
18 having been called as a witness, was duly sworn,
19 examined, and testified as follows:
20 MR. MARKS: Good morning, ladies and
21 gentlemen.
22 THE JURY PANEL: Good morning.
23 DIRECT EXAMINATION
24 BY MR. MARKS:
25 Q. Good morning, sir.
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1 A. Good morning.
2 Q. Please state your name for the jury.
3 A. Bennett LeBow.
4 Q. And where do you work?
5 A. I'm chairman of Vector Group, Limited, here
6 in Miami.
7 Q. And Vector is the parent of both Liggett
8 Group, Inc. and Brooke Group Holding?
9 A. That's correct.
10 Q. Do you also hold a position at Liggett?
11 A. I'm a director of Liggett.
12 Q. Mr. LeBow, you testified in this courtroom
13 for Mr. Rosenblatt, on behalf of the plaintiffs, during
14 Phase I of the trial, so the jury is familiar with who
15 you are.
16 If you would, please just give the jury a
17 brief synopsis of your background.
18 A. Well, I was born in Philadelphia,
19 Pennsylvania; attended school there; graduated as an
20 electrical engineer from Drexel University in
21 Philadelphia; went to graduate school at Princeton;
22 taught undergraduate at Princeton; and from there went
23 to the United States Army for two to five years: two
24 years, military; three years, civilian, stationed at
25 the Pentagon.

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1 Since that time, which is since 1970, I've
2 been involved in various companies, in acquiring
3 companies, primarily troubled companies, involved in
4 investment banking and, like I say, companies.
5 Q. You currently -- the company that you're
6 currently with, is that a holding company?
7 A. Yes. Vector is a holding company that is
8 involved in, obviously, tobacco. We're involved also
9 in real estate. We're involved in investment banking
10 also.
11 Q. Mr. LeBow, when did your company purchase

12 Liggett?
13 A. In 1986.
14 Q. Were you the chief executive of your company
15 at the time this purchase was made?
16 A. I think I was nominally the chairman of the
17 company at the time, yes.
18 Q. What was your focus when your company
19 purchased Liggett back in 1986?
20 A. Back in 1986, it was primarily just an
21 investment, looked upon as a financial investment only.
22 Q. Was it your intention, back in 1986, when
23 your company purchased Liggett, for yourself to become
24 involved in smoking and health policy issues on behalf
25 of the tobacco company?

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1 A. My normal method of operating is let the
2 management run the company. We're strictly normally
3 hands-off management, and that's the practice I
4 followed from 1986 until about 1995, when that changed
5 dramatically.
6 Q. So you were hands-off with respect to
7 Liggett; is that correct?
8 A. That's correct. The management of Liggett,
9 which is the same management that's been there for
10 years, they ran it for quite a few years during that
11 period of time.
12 Q. Are you involved today in policy issues
13 related to smoking and health, as it applies to
14 Liggett?
15 A. 100 percent, I am.
16 Q. When did you first become involved in policy
17 issues related to Liggett?
18 A. In late 1995, it came to my attention that
19 there were a lot of lawsuits out there; attorneys
20 general had started lawsuits; there were some class
21 action lawsuits.
22 I hadn't paid much attention to it before
23 then, because all my then-lawyers told me: "Don't
24 worry about it; no problem; we've never paid a penny,
25 you know, in 40 years," and so forth and so on.

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1 But then some signals came that made me
2 interested; I should get involved more.
3 Q. Mr. LeBow, controversy was nothing new to the
4 tobacco companies in 1995; isn't that right?
5 A. That's correct. There was some lawsuits --
6 like I say, some lawsuits around. Attorneys general
7 had gotten involved, and some class actions and
8 individual lawsuits.
9 Q. Were the allegations in these new lawsuits
10 different from what the companies had seen previously?
11 A. Well, I started to see a new allegation about
12 nicotine, nicotine being addictive, and the information
13 was conveyed to me that no one had ever warned smokers
14 about nicotine. Things of this nature were sending up
15 some red flags to me; some new red flags, I should say.
16 Q. So what did you do?
17 A. I instructed new attorneys to contact the
18 plaintiffs. I wanted to find out more. And I will

19 add, this was the first time in 40 years any tobacco
20 company had ever talked to the other side, let alone
21 understood what was going on.

22 And they started some discussions in late
23 1995 with attorneys general lawyers and class action
24 lawyers.

25 Q. Did those discussions culminate in
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1 settlement?

2 A. Yes. In March 1996, I agreed to settle with
3 the attorneys general; I agreed to settle with the
4 class action that was ongoing at the time, the Castano
5 class action, and this was publicly announced in March
6 1996, to a huge outcry.

7 Q. Now, Mr. LeBow, prior to entering into
8 discussions with the attorneys general, members of the
9 public health community, were you aware that there had
10 been smoking-related lawsuits against Liggett and the
11 other companies for several decades?

12 A. Yes, for about 40 years, like I say, there
13 have been lawsuits. And I was told by my lawyers at
14 the time: "Don't worry about it; we've never paid a
15 penny; we've got a lot of money; we'll beat them," et
16 cetera, et cetera.

17 Q. Were you aware of the tobacco companies'
18 record over the 40 years of litigation?

19 A. Many times I was told: "Don't worry," like I
20 say, "Over 40 years we've never paid a penny or lost a
21 lawsuit."

22 Q. Mr. LeBow, were you aware of how many smokers
23 and former smokers there were in the United States at
24 the time you entered into these discussions?

25 A. Yes, of course. 50 million, 100 million.

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1 You know, enormous amount.

2 Q. Mr. LeBow, did you consider what the
3 consequences would be of one tobacco company, after 40
4 years of fending off smokers, going -- going out,
5 settling by themselves smoking-related claims?

6 A. Well, I remember all -- all of the executives
7 getting up in Congress and saying: "I don't
8 believe" --

9 MR. REID: Objection, Your Honor. Hearsay.
10 Also subject to previous rulings.

11 THE COURT: Unless he was there, maybe.

12 MR. REID: Not responsive to the question.

13 THE COURT: Sustained.

14 A. I -- I remember, you know, various things
15 that happened in the public, the Surgeon General's
16 Report and things of this nature, and I understood that
17 if I settled, we might open a complete, you know,
18 Pandora's box, so to speak, of lawsuits, but I didn't
19 care because I felt it was absolutely the right thing
20 to do, and in 1996, I did it, period.

21 BY MR. MARKS:

22 Q. Mr. LeBow, you said that your discussions
23 with the state attorneys general and members of the
24 public health culminated in a settlement agreement in
25 March of 1996.

1 Is this the first time that a tobacco company
2 had agreed to settle a tobacco case with an adversary?

3 A. It was the first time a tobacco company
4 talked with an adversary, let alone enter into a
5 settlement agreement. The very first time.

6 Q. Mr. LeBow, I'm going to show you a document
7 that's been marked as Defendants' Exhibit L-1.

8 Is that a copy of the March 1996 settlement
9 agreement to which you refer?

10 A. Yes, it is.

11 Q. Is that your signature on the back pages of
12 that document?

13 A. Yes, it is.

14 Q. Mr. LeBow, what sort of concessions by
15 Liggett were provided for under this March 1996
16 agreement?

17 A. Well, the primary concession, other than
18 monetary -- monetary payments, was that we agreed to
19 waive our objections to the FDA regulations, that the
20 FDA was trying to put into place at the time.

21 All of the tobacco companies were suing the
22 FDA to stop that --

23 MR. REID: Objection, Your Honor. That's
24 subject to your previous rulings.

25 THE COURT: All right. Let's just talk about
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1 what Liggett did, please.

2 THE WITNESS: Okay.

3 A. We agreed to waive our objections to any FDA
4 restrictions. We agreed to stop various advertising
5 that the FDA had asked for. And we promptly did that,
6 in addition to some other restrictions that are in
7 here.

8 BY MR. MARKS:

9 Q. Do you recall what some of the other
10 restrictions were?

11 A. Well, I think we agreed to stop all
12 promotional activities, you know, sporting events,
13 anything of that nature. We agreed to -- I think
14 pretty much what the FDA had asked for, we agreed to.

15 Q. You also mentioned financial payments. Did
16 Liggett make financial payments to the states under
17 that agreement?

18 A. Yes. We paid a few million dollars under
19 this agreement.

20 Q. You're saying a few million dollars, like
21 that's not meaningful. Why are you saying it that way?

22 A. Well, in 1996, Liggett pretty much had a
23 negative net worth, was on the verge of bankruptcy, and
24 the attorneys general understood what our financial
25 position was. There was no question about it.

1 I think our net worth was minus \$200 million,
2 or something along those lines. And what was important
3 to the attorneys general was to get this -- get this
4 war on tobacco going, and I think we helped that.

5 Within, I think, a couple months, 20 other
6 states came in and started suing also.
7 Q. Mr. LeBow, the payments that you made, did
8 you fund those by raising prices?
9 A. Absolutely not. It came out of our -- our
10 limited pocket, so to speak.
11 Q. Why didn't Liggett raise its prices to fund
12 the settlement?
13 A. Liggett has about 1 percent of the market.
14 We have no power to raise the prices. We raise prices,
15 we're out of business. No one would buy our
16 cigarettes. We don't have the market power the other
17 companies have. There is no way we can raise prices
18 independently.
19 Q. From your perspective, what was the reaction
20 by public health authorities to the settlement of March
21 1996?
22 MR. REID: Objection to what someone's
23 reaction is.
24 THE COURT: Generally what he knows because
25 of his knowledge.

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1 A. Well, during these negotiations was the first
2 time I met Dr. David Burns, who was very interesting
3 and really knew the public health side of things, and
4 since then --
5 MR. WEBB: Your Honor, I object to the
6 narrative --
7 THE COURT: I would agree with the objection,
8 as to anything Dr. Burns may have said, but things that
9 have been done that you're knowledgeable about, as far
10 as reactions are concerned, would be all right.
11 A. Okay. Then I would say Dr. Burns, who
12 represented the public health community during these
13 negotiations, was 100 percent for us.
14 BY MR. MARKS:
15 Q. So, Mr. LeBow, was that -- after doing this
16 first settlement, had you accomplished all that you had
17 set out to do?
18 A. Well, interesting, right up to the first
19 settlement, all these lawyers who, for 40 years, have
20 been telling me we never paid a dime, they went and
21 fired me, which was fine, because I was getting ready
22 to fire them, so there was no problem in that regard.
23 And after that -- after the settlement and
24 after the lawyers were fired, I instructed my new
25 lawyers to get the documents, because I'd never seen

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1 any documents, so-called documents.
2 So we retrieved, after this first settlement,
3 boxes and boxes of documents, and I instructed my new
4 lawyers to go through those documents.
5 Q. What did you do once the lawyers went through
6 those documents?
7 A. Well, the lawyers, you know, reported back to
8 me that there were some serious, serious --
9 MR. WEBB: Your Honor, I didn't mean -- I
10 hate to interrupt Mr. LeBow. May we be heard briefly
11 at sidebar?

12 THE COURT: Yes.
13 MR. WEBB: Thank you.
14 (The following proceedings were had at
15 sidebar:)
16 THE COURT: I'm anticipating your motion.
17 Go ahead.
18 MR. WEBB: Actually, two objections. Number
19 one, Your Honor -- I've actually not been objecting.
20 Mr. Marks, as I think Your Honor ruled, has set the
21 stage. But he's now going into the details --
22 THE COURT: Yes.
23 MR. WEBB: -- that clearly, this is the
24 verbatim stuff you read in the transcript from Phase I.
25 Number two, the hearsay is not admissible. Either way,
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1 it's not admissible.
2 And I don't have any objection --
3 THE COURT: He's waiving a privilege aside
4 from that. I agree, it's overstepping the bounds.
5 MR. MARKS: This is the last question I had
6 on this.
7 THE COURT: The very last question? Like:
8 "What do you think about this case?"
9 MR. WEBB: I mean, Your Honor, this witness
10 clearly doesn't respond to questions exactly the way
11 they're phrased.
12 MR. MARKS: You're telling me.
13 MR. WEBB: So --
14 THE COURT: It is getting into prior
15 testimony that he went into, because it's almost
16 verbatim.
17 MR. MARKS: I'll move on.
18 THE COURT: Okay.
19 (The sidebar conference was concluded, and
20 the following proceedings were held in open court:)
21 BY MR. MARKS:
22 Q. Mr. LeBow, after your attorneys had reported
23 back to you, what further action did you take?
24 A. We contacted some of the other attorneys
25 general from other states who had just filed lawsuits,
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1 and entered into negotiations to do another settlement,
2 a second settlement.
3 Q. And when was that?
4 A. That was concluded in March of 1997.
5 Q. And how many states were involved in this
6 second settlement?
7 A. About 20 states joined in the settlement.
8 And also, all of the conditions of the second
9 settlement were applied to the first settlement; which,
10 by the way, the first settlement included the state of
11 Florida, Texas, and states of that nature.
12 Q. I'm going to hand you a document marked as
13 Exhibit L-2.
14 Is that a copy of the March 1997 settlement
15 agreement?
16 A. Yes, it is.
17 Q. Is that your signature on the back pages of
18 the agreement?

19 A. Yes, it is.
20 Q. I take it that that, again, is a fairly
21 complex document?
22 A. You can tell by the weight, it's pretty
23 complex, yes.
24 Q. Let's talk about some of the most significant
25 things that you and Liggett agreed to do in connection
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1 with this agreement.
2 First of all, Mr. LeBow, did you make a
3 public statement in March 1997, setting forth yours and
4 Liggett's position on whether cigarette smoking causes
5 disease?
6 A. In March of 1997, we unequivocally came out
7 and said we believe that smoking does cause all these
8 terrible diseases -- lung cancer, emphysema, et cetera,
9 et cetera -- and we also came out with a definitive
10 statement that we believe smoking is addictive, period.
11 No qualifications at all.
12 Q. Mr. LeBow, with respect to your statement on
13 causation, is that still the company's position today?
14 A. 100 percent.
15 Q. Mr. LeBow, you said it before; you didn't
16 need any qualifiers or definitions for that statement?
17 A. None whatsoever. Very clear; very concise.
18 Smoking is hazardous to your health, period. End of
19 subject. And is addictive.
20 Q. No need for further research on the mechanism
21 of disease to come up with that statement?
22 A. None whatsoever.
23 Q. You mentioned you also made a statement with
24 respect to addiction. Any qualifiers needed for the
25 statement: Smoking is addictive?

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1 A. None whatsoever.
2 Q. Mr. LeBow, has Liggett communicated its
3 position on the addictiveness of smoking to its
4 consumers in any way, other than by a public
5 announcement?
6 A. On every pack of cigarettes that Liggett
7 produces, we have put the warning label: "Warning:
8 Smoking is addictive," period, on the front of the
9 pack, I will add.
10 Q. I'll put up on the screen a blow-up of a pack
11 of cigarettes that I believe you sell.
12 The jury is familiar with this. They've seen
13 it once or twice already.
14 Mr. LeBow, does this warning, "Smoking is
15 addictive" appear on all of the brands of cigarettes
16 that Liggett sells today?
17 A. On every pack of cigarettes Liggett
18 manufactures, that appears, yes.
19 Q. How long now has Liggett been placing this
20 warning on its cigarettes?
21 A. Well, we started, like I said, in March 1997.
22 It took a few months to get it on to every pack, but
23 it's now on every pack.
24 Q. It's been on the packs now for about three
25 years?

1 A. About three years, yes.

2 Q. Let me ask you this, Mr. LeBow: In the past
3 three years, has any federal official or public health
4 authority ever objected or complained to Liggett about
5 adding a warning to its packaging, in addition to the
6 mandated Surgeon General's warning?

7 A. On the contrary. They've been supported.
8 They think it's great, and so do we.

9 Q. Mr. LeBow, getting back to your settlement
10 with the attorneys general in 1997, did that settlement
11 also provide for Liggett to cooperate with the state
12 attorneys general?

13 A. Well, we agreed at that time to waive all of
14 our attorney-client privileges as relating to documents
15 that we had in our possession. We released all those
16 documents to the public.

17 We also agreed to cooperate with attorneys
18 general, and voluntarily, I will add, that we agreed to
19 cooperate with anyone else who wants our cooperation,
20 and to testify on behalf of the attorneys general in
21 various cases.

22 Q. The attorneys general still had cases ongoing
23 against the tobacco companies?

24 A. Oh, yes, about 20, 30, something of that
25 nature, yes.

1 Q. Let's start with the documents first.

2 Other than just simply packing documents in a
3 box and shipping them to the states' lawyers, how is it
4 that Liggett assisted the states in obtaining documents
5 for their use in lawsuits?

6 MR. WEBB: Your Honor, can I object on this
7 on the same grounds as Phase I?

8 THE COURT: Yes. I'll rule on the same
9 grounds. Sustain the objection.

10 MR. MARKS: Can I be heard on this?

11 THE COURT: Well, you can be heard, but I
12 thought we had discussed this before.

13 All right. We'll talk about it.

14 (The following proceedings were had at
15 sidebar:)

16 THE COURT: Yes?

17 MR. MARKS: If you review their motion, the
18 only thing Mr. LeBow testified to in Phase I is
19 essentially what I prefaced the statement with, which
20 is: Other than packing up boxes and sending them to
21 the states, what else did Liggett do with respect to
22 the documents? So I'm getting --

23 THE COURT: Put it on the Internet?

24 MR. MARKS: No, no. What Liggett did was --
25 hopefully he says this -- I don't know -- what Liggett

1 did, in addition, was it went to state courts and
2 assisted in adjudications with respect to privilege
3 claims on these documents.

4 MR. WEBB: Well, Your Honor, that's -- I

5 mean, he clearly --
6 THE COURT: Now we're getting into some legal
7 issues here.
8 MR. WEBB: Your Honor, plus --
9 THE COURT: He released this to the general
10 public.
11 MR. MARKS: I think that's --
12 THE COURT: What more do you need? You have
13 to tell the jury that you had a privilege that you
14 waived --
15 MR. MARKS: I'll move on.
16 THE COURT: -- by releasing it to the public?
17 I mean, that's common knowledge.
18 (The sidebar conference was concluded, and
19 the following proceedings were held in open court:)
20 BY MR. MARKS:
21 Q. Mr. LeBow, with respect to your release of
22 documents, did other companies resist yours and
23 Liggett's efforts to bring these documents to light?
24 MR. WEBB: Your Honor, I object to that.
25 THE COURT: All right. We'll just leave that
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1 at this point, and just talk about what you did and not
2 what other folks may have done. They'll have an
3 opportunity to cross examine you.
4 So sustain the objection.
5 Is that microphone on, by the way?
6 MR. MARKS: Can you hear me?
7 THE COURT: Can you all hear in the back?
8 Yes or no?
9 THE CLERK: It's on, Judge.
10 BY MR. MARKS:
11 Q. Mr. LeBow, besides the documents, the other
12 aspect of cooperation that you mentioned was that you
13 agreed to provide people from Liggett, including
14 yourself, to testify in the state attorneys general
15 cases. Can you explain that to the jury?
16 A. Like I say, there were some ongoing cases.
17 There were two cases, particularly, I believe in
18 Minnesota and in the state of Washington, where I went
19 and I testified on behalf of the state attorneys
20 general, telling them that I really believe smoking is
21 addictive; that smoking caused all these problems, et
22 cetera, et cetera, and testifying about some of the
23 documents we released and so forth.
24 Q. Were there other attorney general cases that
25 went to trial that you did not testify in?
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1 A. No. These are the only two that I know of
2 that went to trial, and I testified in both of them.
3 They were settled before, you know, any verdict.
4 Q. Mr. LeBow, have you limited yourself to
5 testifying in only cases in which Liggett has reached a
6 settlement?
7 A. No. As I said, I've testified in other
8 cases; anybody who wanted me. I've testified in the
9 secondhand smoke case in -- I believe it was Indiana.
10 I testified in Ohio; in other class action cases. I've
11 testified wherever we've been asked to.

12 Q. And you testified here?
13 A. And I testified here, you know, for -- I
14 testified here in the Broin case, the first case before
15 Judge Kaye, and I've testified here in -- during
16 Phase I in this case.
17 Q. Mr. LeBow, why is it that you testify for the
18 plaintiffs in cases in which your own company is still
19 a defendant?
20 A. Because I think it's absolutely the right
21 thing to do, and I believe in some of the things we're
22 trying to do in the war on tobacco, and I think it's my
23 duty to do it, almost, correctly.
24 Q. How does it make you feel?
25 MR. WEBB: Your Honor, I object, and I object
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1 to how he feels.
2 THE COURT: Overrule the objection on how he
3 feels.
4 You may answer the question.
5 A. I feel very good doing it. I sleep well at
6 night. And it's the kind of thing I want to do, and I
7 look forward to doing it whenever I'm asked to do it.
8 BY MR. MARKS:
9 Q. Just to finish up on Liggett's cooperation.
10 Mr. LeBow, have you received any
11 commendations or awards for the actions of Liggett to
12 further their causes?
13 A. The state of Florida, who reached a massive
14 settlement with the tobacco industry, Governor Chiles,
15 the late Governor Chiles, and Attorney General
16 Butterworth and the legislature gave me an award, yes,
17 a commendation for what we did.
18 Q. I'm going to show you a document that's been
19 marked as Defendants' Exhibit L-5.
20 Mr. LeBow, is this a copy of the proclamation
21 that was given to you by then-Governor Chiles and
22 Attorney General Butterworth?
23 A. Yes, it is.
24 Q. Mr. LeBow, the first several clauses of this
25 proclamation are "whereas" clauses. And just looking
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1 at them, do they reflect some of the things that you
2 did to further the state's cause?
3 A. Absolutely.
4 Q. Mr. LeBow, can you read for the jury the "now
5 therefore" clause, going forward?
6 A. "Now, therefore, I, Lawton Chiles, by virtue
7 of the authority vested in me as the Governor of the
8 state of Florida, and by Attorney General Robert A.
9 Butterworth, do hereby recognize Bennett S. LeBow for
10 his courageous effort to redress past wrongs and secure
11 a brighter, healthier future for all Floridians."
12 Q. Mr. LeBow, in taking the steps that you took,
13 is that one of your goals, to make amends for past
14 wrongs?
15 A. That was one of them, but also my main goal
16 was to try and correct things, going forward.
17 Q. Mr. LeBow, I want to turn to some things that
18 Liggett does today, that go beyond any settlement

19 agreements.
20 Let's start with the issue of ingredient
21 disclosure. A couple of the chief executives for other
22 tobacco companies have showed the jury that they place
23 on their Internet Web sites alphabetically-ordered
24 lists of all of the additives that are in all of their
25 cigarettes, without any breakdown by brand. What has
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1 Liggett done in this regard?
2 MR. WEBB: Your Honor, actually --
3 MR. REID: Objection.
4 MR. WEBB: I object as not -- there is a
5 breakdown by brands.
6 (The following proceedings were had at
7 sidebar:)
8 MR. WEBB: Your Honor, my objection was to --
9 the question, clearly, it's not consistent -- I mean,
10 it's not supported by the evidence. It assumes a fact
11 not in evidence, because Mr. Szymanczyk with Philip
12 Morris showed the jury an exhibit where we broke down
13 the ingredients by all brands, and we showed it to the
14 jury.
15 MR. REID: Under the Florida rule, you have
16 to have a good faith belief to state a fact in a
17 leading question.
18 MR. MARKS: Your Honor, what I said was all
19 of the additives, meaning that all of the breakdowns.
20 For example, sure, Philip Morris --
21 THE COURT: You said where he broke down the
22 ingredients.
23 MR. REID: Ingredients by brands. We do.
24 THE COURT: So if you're talking about
25 ingredients --

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1 MR. MARKS: I will be more specific.
2 THE COURT: Correct the mistake.
3 MR. SMITH: How are you going to be more
4 specific?
5 MR. MARKS: I'm going to talk about the fact
6 that -- that artificial flavors, for example, is on
7 their Web sites, is broken down alphabetically on the
8 list. It's not --
9 THE COURT: Qualitative?
10 MR. MARKS: -- not by brand.
11 THE COURT: As far as flavors is concerned?
12 MR. MARKS: That's on the Web sites, right.
13 THE COURT: Let's correct the issue here.
14 MR. WEBB: Your Honor, can I make a broader
15 objection, then? Because I have no objection to
16 Mr. LeBow describing what Liggett does. He has a right
17 to do that.
18 THE COURT: Yes.
19 MR. WEBB: What he's now trying to do is
20 compare what he does to what other companies have been
21 doing. We have not been allowed to compare one
22 witness' testimony to another. You've stopped us from
23 doing it. It's improper to do.
24 THE COURT: It's a little bit different.
25 MR. MARKS: It's comparing facts.

1 THE COURT: I think under the circumstances
2 of where we are with Liggett, vis-a-vis their position
3 in this trial, I think if we just stick strictly with
4 what Liggett is doing, without mentioning what other
5 folks are doing.
6 MR. MARKS: Okay. I'll try.
7 THE COURT: I think we'd be a lot better off.
8 Come back.
9 MR. WEBB: Mr. Marks.
10 THE COURT: I've been rethinking this issue
11 about the cross examination, and going back over it in
12 my mind about the order of things, and you're right. I
13 did do it the other way with Brookes, I guess it was.
14 And I suppose it's the appropriate thing, because the
15 more the testimony comes out, the more it sounds like
16 it's plaintiffs' testimony.
17 So I'll reverse myself on that and allow the
18 plaintiff to do the first cross, and then you folks do
19 the second.
20 MR. MARKS: That's fine, Your Honor.
21 THE COURT: It will be more consistent.
22 MR. SMITH: Thank you, Your Honor.
23 (The sidebar conference was concluded, and
24 the following proceedings were held in open court:)
25 BY MR. MARKS:

1 Q. Mr. LeBow, can you explain to the jury what
2 it is that Liggett has done with respect to ingredient
3 disclosures?
4 A. We've put the ingredients of every one of our
5 cigarettes on the carton. Our very carton has a
6 detailed list of the ingredients of every one of our
7 cigarettes. We've fully disclosed everything.
8 Q. I'm going to put on -- Mr. LeBow, this is a
9 carton of Liggett Select cigarettes. This a brand that
10 Liggett sells?
11 A. Yes.
12 Q. And on the side of the carton is where the
13 ingredient -- you list ingredients?
14 A. That's correct.
15 Q. What's your theory for listing ingredients on
16 the cartons?
17 A. Well, the public health people, you know,
18 want to do this. The Massachusetts Department of
19 Public Health passed a law requiring this, and we --
20 which the companies all objected to --
21 MR. WEBB: Your Honor --
22 MR. REID: Your Honor, I object.
23 THE COURT: All right. Let's not talk about
24 what other people --
25 THE WITNESS: Okay --

1 THE COURT: -- have objected to or agreed to.
2 Let's just talk about what Liggett did.
3 A. We agreed with the Massachusetts Department
4 of Health and the public health officials to disclose

5 all of our ingredients on all of our cartons.
6 BY MR. MARKS:
7 Q. Mr. LeBow, did you also provide information
8 directly to the Massachusetts Department of Health and
9 the CDC?
10 A. Yes. We gave them a much more detailed
11 breakdown than what you see on the carton, by weight,
12 by whatever other criteria they want. We gave them
13 everything.
14 Q. So, for example, Mr. LeBow, on the carton,
15 you have -- you list things like artificial tobacco
16 flavors. And what you gave to the Massachusetts
17 Department of Public Health and to the CDC, would that
18 be expanded upon?
19 A. Yes. They have all of the details of what
20 that really constitutes, so they can analyze any carton
21 of our cigarettes and do whatever they wish to do to
22 ensure the public health. That's their job. And we
23 gave them all of the information to make their
24 decisions.
25 Q. And you gave that to the Massachusetts
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1 Department of Public Health and to the CDC on a
2 brand-by-brand basis?
3 A. On a brand-by-brand, detailed basis, yes.
4 Q. Let's talk about another aspect of how
5 Liggett conducts its business today: media advertising.
6 Over the past few weeks, this jury has seen
7 tens, if not hundreds of current cigarette magazine
8 advertisements. None of -- none of them have been
9 Liggett ads. Can you explain why that is?
10 A. Because we don't do any media advertising to
11 consumers, period. We do absolutely no advertising
12 whatsoever.
13 Q. Let me ask you this question: We're going to
14 get to the company's financial condition in a little
15 while, but if Liggett had a desire today to do media
16 advertising, could it afford to do it?
17 A. Yes. We could afford to do it, and in time,
18 we'd get our money back just from increased sales, but
19 we've made a conscious decision, we do absolutely no
20 advertising.
21 Q. Why?
22 A. Because it's not right. I mean, people out
23 there do smoke; we admit that. You know, adults do
24 smoke. We don't want to entice them any more. We're
25 selling discount cigarettes with no advertising at all.
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1 Q. Mr. LeBow, during Phase I of this case, this
2 jury saw also a lot of ads, and some of them were
3 Liggett ads. Were you aware of that?
4 A. Yes. These are ads from the 1940s and 1950s.
5 You know, obviously I wasn't around then to control
6 that, but we do not advertise at all. And we agreed to
7 honor that. By the way, we agreed to waive the FDA
8 restriction under our first settlement, so that was the
9 impetus, and we stopped all advertising, period, end of
10 subject.
11 Q. Mr. LeBow, your decision not to advertise, is

12 that a lesson you learned from this case?
13 A. It's a lesson I learned from everything
14 involving the tobacco problems that we have in this
15 country, and I think we have significant ones.
16 Q. Mr. LeBow, are you aware of what Liggett's
17 share of the youth market is?
18 A. It's immeasurable, less than one-tenth of 1
19 percent, if you find somebody who even smokes our
20 cigarettes. I mean, it's impossible. Youth smoke
21 brands; they want premium brands. They want to show
22 off with the major company's premium brands. They do
23 not smoke discount brands at all. You know, it's
24 immeasurable, totally immeasurable.
25 Q. Mr. LeBow, do you attribute the low numbers
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1 to the fact that you don't do any advertising?
2 A. Low numbers of what?
3 Q. Of Liggett's market share, youth market
4 share.
5 A. I attribute it to lots of things. Number
6 one, I attribute it to we stepped up and did the right
7 thing and were hurt in the marketplace, but that's
8 okay. I feel better doing the right thing than selling
9 cigarettes that much.
10 Q. Mr. LeBow, let's talk for a little while
11 about Liggett's business and financial condition.
12 First of all, does Liggett sell any other
13 products other than cigarettes?
14 A. No.
15 Q. Does Liggett have international sales?
16 A. No.
17 Q. How about the other entity that's a defendant
18 in this case, Brooke Group Holding; what does it do?
19 A. It just owns the stock of Liggett. That's
20 all it does.
21 Q. Does Brooke have any operations of its own?
22 A. No.
23 Q. What brands of cigarettes does Liggett sell
24 today?
25 A. It sells one premium brand called Eve, a
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1 women's cigarette, which is actually about 6 or 7
2 percent of our sales; and every other cigarette we sell
3 is a discount cigarette, which is -- and most of the
4 brands of the discount, we don't even own. A good
5 portion of sales are brands that our customers own; we
6 just contract and manufacture for.
7 Q. What is Liggett's total share of the market
8 for cigarettes in the United States, including both
9 premium and discount?
10 A. About 1.1, 1.2 percent.
11 Q. Has Liggett's market share been steady at
12 1.1, 1.2 percent for some time now?
13 A. No. It's been going down. When I took over,
14 we had like 3 percent of the market, some number like
15 that. It's been going down significantly since then.
16 Q. Mr. LeBow, did you prepare a chart that shows
17 Liggett's trend in the market share over the past
18 decade?

19 A. I believe, yes.
20 Q. I show you what's been marked as Exhibit
21 L-22.
22 Mr. LeBow, is this the chart that you
23 created?
24 A. Yes.
25 Q. Mr. LeBow, does this chart reflect that
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1 Liggett's market share today is only about a third of
2 what it was ten years ago?
3 A. Yes, it does.
4 Q. Mr. LeBow, I notice from looking at the chart
5 that there are two years in particular, 1993 and then
6 1997, where Liggett had rather huge drops in its market
7 share.
8 Let's start with 1993. Why did Liggett's
9 market share drop so much in 1993?
10 MR. WEBB: Your Honor, objection. Relevancy,
11 Your Honor.
12 THE COURT: Overruled.
13 A. In 1939, Philip Morris came out with what was
14 called Marlboro Friday. They lowered prices
15 significantly to affect the discount market, and they
16 affected everyone in the industry. All of the discount
17 sales went down. They were trying to protect their
18 premium sales on Marlboro. So that's what happened
19 there.
20 BY MR. MARKS:
21 Q. Marlboro Friday, was that a significant event
22 in the history of tobacco?
23 A. Yes, it was. Again, like I say, Philip
24 Morris wanted to protect their premium sales, where
25 most of their profit is.
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1 Q. And the discounting that Philip Morris did in
2 1993, that caused a drop, in your opinion, from 3 to
3 2.4 percent in your market share?
4 A. There's no question that's true.
5 Q. And that's -- that's about a 20-percent drop?
6 A. That's correct.
7 Q. Mr. LeBow, in 1997, your market share dropped
8 from 1.9 percent to 1.3 percent. What do you attribute
9 that drop to?
10 A. Well, you also notice in 1996, when we did
11 our first settlement, we lost market share. In 1997,
12 when we did the second settlement and released all of
13 the documents, we lost a very significant market share.
14 A lot of wholesalers aligned with the other
15 companies or other people, I believe, and you know,
16 just cancelled us. We had some customers that called
17 us up and said: We don't want to deal with you; you
18 disclosed documents; you did this, you did that.
19 We said: Fine. We don't want to deal with
20 you, too.
21 So, that's what happened.
22 Q. You lost customers?
23 A. We lost customers.
24 Q. You lost customers as a result of your
25 actions?

- 1 A. That's correct.
- 2 Q. Mr. LeBow, have you ever seen any of the
- 3 communications that were made to your customers?
- 4 A. Yes, I have.
- 5 Q. Marked as Exhibit L-6, a letter from the
- 6 American Wholesaler Marketers Association dated April
- 7 7, 1997.
- 8 Mr. LeBow, for starters, what is the American
- 9 Wholesale Marketers Association?
- 10 A. It's an association that most of our
- 11 customers belong to, an association of distributors,
- 12 wholesale distributors, most of them being cigarette
- 13 distributors.
- 14 Q. Are wholesale distributors your main
- 15 customers?
- 16 A. Yes. Some do, yes.
- 17 Q. Liggett doesn't sell -- does Liggett sell
- 18 directly to consumers?
- 19 A. No, we do not.
- 20 Q. When did Liggett receive this letter?
- 21 A. I believe one of our sales managers in
- 22 Philadelphia received it, an individual by the name of
- 23 Howard Pesch.
- 24 Q. And who did he receive it from?
- 25 A. I believe from one of our customers.

- 1 Q. Mr. LeBow, what is -- what is the gist of
- 2 this letter?
- 3 A. The gist of this letter is that since we did
- 4 our March '97 settlement with 22 states, or 20
- 5 states -- they don't even have that right -- and we
- 6 agreed to release documents, and we agreed to put
- 7 "Smoking is addictive" on our packs, and we agreed to
- 8 acknowledge the hazardous nature of tobacco and
- 9 cigarettes.
- 10 They're kind of telling -- they're trying to
- 11 force all their customers, telling all their members:
- 12 Don't deal with Liggett because they're not protecting
- 13 you, like all of the other companies are, et cetera, et
- 14 cetera.
- 15 It's pretty clear what the intent of this
- 16 letter is.
- 17 Q. When you say Liggett is not protecting them,
- 18 is that accurate?
- 19 A. No. It was not accurate.
- 20 Q. Why is that?
- 21 A. We never changed any theoretical protections
- 22 for customers. We continued to indemnify them like
- 23 everyone else. Nothing changed in that respect.
- 24 But this was obviously just directed at us
- 25 for the actions we took at that time.

- 1 Q. Mr. LeBow, this last paragraph here on the
- 2 second page, is this the recommendation that the AWMA
- 3 made to its customers?
- 4 A. This is what they made. This is their

5 letter. They sent it to all of their customers.
6 Q. What does the paragraph read?
7 A. "The AWMA does not take a position with
8 regard to whether a distributor or any other party in
9 the distribution chain should be involved with the sale
10 and/or distribution of Liggett products. The purpose
11 of providing you with this memorandum now is to express
12 the AWMA's concern that no one involved in the
13 distribution chain should expect any manufacturer
14 support from Liggett in the event such person is
15 subject to any cause of action or any other activity
16 involving the sale or distribution of Liggett
17 cigarettes."
18 It was obviously intended to scare our
19 customers away.
20 Q. Mr. LeBow, it's your belief that
21 communications like this to your customers caused
22 Liggett to lose nearly one-third of its market share in
23 1997?
24 A. We had a couple of customers directly call us
25 up and say: We're canceling you. We don't want to
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1 deal with you anymore. You're a turncoat. You turned
2 on the industry, et cetera, et cetera.
3 Q. Mr. LeBow, a drop of one-third of your market
4 share in one year, is that a big drop?
5 A. I don't think any cigarette company ever lost
6 that much percent in any one year.
7 Q. To date, Mr. LeBow, has Liggett recovered
8 from that loss in market share?
9 A. No, we've never recovered from that loss, but
10 we've stabilized the company somewhat.
11 Q. You mentioned earlier that Liggett's sales
12 today were primarily in the discount segment of the
13 market rather than premium cigarettes.
14 From a business standpoint, what is the
15 difference between premium brands and discount brands?
16 A. I think, as we all know, most of the profit
17 is in the premium brands, which the big companies all
18 try to protect. The profits in the discount brands is
19 minimal or much less; much, much less, I might add.
20 Q. Is it typical for a tobacco company to be as
21 heavily dependent on the discount market as Liggett is?
22 A. I think the jury has seen all of the numbers
23 on most of the other companies, and the answer is no.
24 Like I say, over 90 percent of our volume is in the
25 discount area, which is the reverse for lots of other
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1 companies.
2 Q. Have you prepared a chart that shows the
3 different current product mixes of the defendants?
4 A. Yes.
5 MR. REID: May we approach, Your Honor?
6 THE COURT: Okay.
7 (The following proceedings were had at
8 sidebar:)
9 THE COURT: What chart are you talking about?
10 Okay. Premium Discount Product Mix by
11 Company to First Quarter.

12 MR. REID: Yes, we object to his giving
13 testimony about internal information of other
14 companies. He can say what his is. We don't know the
15 basis of this.
16 MR. MARKS: Sure, you did.
17 MR. REID: That's not for examination. It's
18 hearsay. Furthermore, you have not allowed other
19 people to put in comparative-type information. He can
20 state what his company is.
21 MR. MARKS: It's comparative-type
22 information.
23 THE COURT: Sure. Everybody did, as far as
24 market share.
25 MR. REID: You can say what your share --
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1 what your company's share of the whole market is, but
2 this is telling them -- this is looking at our internal
3 breakdown of our internal business.
4 MR. MARKS: There's nothing internal about
5 this.
6 THE COURT: Overruled.
7 (The sidebar conference was concluded, and
8 the following proceedings were held in open court:)
9 BY MR. MARKS:
10 Q. Mr. LeBow, have you prepared a chart showing
11 the different premium discount breakdowns of all of the
12 companies --
13 A. Yes.
14 Q. -- that are defendants in this case?
15 A. Yes.
16 Q. This is marked as L-24.
17 Mr. LeBow, can you explain to the jury the
18 significance of this chart?
19 A. Well, it's very dramatic. It shows in color
20 pretty quickly what the status is. Like I said, most
21 of the money is in the premium brands, selling premium
22 brands to whoever buys them. Philip Morris is
23 primarily premium; RJR is a little bit less; Brown &
24 Williamson is 50/50. But the third largest, by
25 profits, company is Lorillard. You can see where all
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1 their money is. And you can see where Liggett is, so
2 we sell primarily discount cigarettes.
3 Q. So Liggett's share, Liggett's portion that is
4 in premium, is less than 13 percent?
5 A. That's correct. And going down, I might add.
6 Q. Now, Mr. LeBow, the jury has heard quite a
7 bit about some major discount brands on the market,
8 such as RJR's Doral and Brown & Williamson's GPC. Is
9 Liggett's discount business concentrated in brands that
10 Liggett owns like Doral or GPC?
11 A. No. Our primary focus in the discount area
12 is what's called private brands or
13 contract-manufacturing brands.
14 Q. Can you explain what that is?
15 A. Well, these are brands that you never heard
16 of. You know, it could be a store brand, like A&P
17 cigarettes, or, you know, things of that nature.
18 As a matter of fact, our largest company, who

19 does 30 percent of our business, is one customer, and
20 it's his brand. He owns the brand. We don't even own
21 the brand. We just manufacture cigarettes for him.
22 Q. You say Liggett doesn't own the brand. What
23 is the relationship between Liggett and these other
24 companies?

25 A. We are like a contract manufacturer. We
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1 manufacture cigarettes for them.

2 Q. Are these contracts of an indefinite length?

3 A. Some are. Some are -- no, not indefinite
4 length, no. Specific length. The large company I
5 mentioned or talked about, I believe the contract is
6 like another year.

7 Q. The company you mentioned, you said -- is
8 that Tourney cigarettes?

9 A. That's correct.

10 Q. This is a brand that you manufacture?

11 A. We manufacture it for Speedway America, is
12 the name of the company that owns it, yes.

13 Q. What is Speedway America?

14 A. It's a convenience -- you know, gasoline
15 convenience stores primarily through the midwest,
16 throughout the midwest.

17 Q. What portion of Liggett's business consists
18 of your contract with Speedway America?

19 A. About 30 -- about 30 percent of our volume is
20 Speedway America, Tourney cigarette; again, a brand
21 they own. We don't own it.

22 Q. If Speedway -- if you lost Speedway America
23 as a customer, if Liggett lost Speedway America as a
24 customer, what would the consequences be to your
25 company?

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1 A. We might have to go out of business.

2 Q. I notice from looking at the box, the carton,
3 that the ingredients are on the carton, as well, for
4 the Speedway America cigarettes. They agreed to put
5 the ingredients on the carton?

6 A. They agreed to put the ingredients on the
7 carton, and they agreed, also, to put "Smoking is
8 addictive" on the packs. We had a long discussion with
9 them, and they are fine people and they agreed to all
10 this.

11 Q. Mr. LeBow, have you prepared a chart
12 demonstrating the current breakdown of Liggett's sales
13 between premium, discount and private label?

14 A. Yes.

15 Q. This is marked as Defendants' Exhibit L-26.
16 Mr. LeBow, can you explain this chart to the
17 jury?

18 A. This is a breakout by units, numbers, you
19 know, number of units of our primary brands --
20 actually, not primary brands -- of the cigarettes we
21 sell. And you can see, you know, our share of the U.S.
22 market is extremely small, in each category.

23 Q. Mr. LeBow, what are black and whites?

24 A. These are the private label and what we call
25 generic cigarettes. It might be just -- it could be a

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- 1 very simple thing, just a pack of cigarettes that says
2 "cigarettes" on it, that someone would sell in a
3 supermarket, things of that nature.
4 Q. Mr. LeBow, if I understand this chart
5 correctly, in the -- these are sales from the first
6 quarter of 2000; is that correct?
7 A. Yes.
8 Q. And in total, the company sold 1.2 billion
9 cigarettes?
10 A. That's correct.
11 Q. And of that, 740 million were in the black
12 and white and private label category?
13 A. That's correct.
14 Q. Of that, you don't own those brands?
15 A. We don't own those brands, no. Some of the
16 brands we do own. Some of them are private label
17 brands.
18 We have like 300 brands you never heard of,
19 just small brands, that a store may have that brand.
20 Like a brand called Eagle cigarettes, for example, that
21 no one ever heard of. Since we don't advertise,
22 there's no -- there's no information there.
23 Q. And Eve, your only premium brand, makes up
24 less than 15 -- 13 percent of your business?
25 A. That's correct. And declining.

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- 1 Q. Mr. LeBow, you talked previously about what a
2 black and white cigarette is. Is this an example?
3 A. Yes. Just -- there's no brand to it. It
4 just says it's basically a cigarette. Quality
5 Cigarettes, period.
6 Q. So there's no brand that you own that's
7 connected with this? You don't own a brand called
8 Quality?
9 A. No.
10 Q. And, again, you sell these?
11 A. We sell these to customers.
12 Q. And they, again, have the ingredients on
13 them?
14 A. Every cigarette we do has the ingredients and
15 the warning labels on the packs.
16 Q. Mr. LeBow, let's talk a little bit about
17 Liggett's current financial position.
18 Let me start, as with all of the tobacco
19 companies, by asking you whether Liggett is required to
20 prepare, on a regular basis, certain accounting and
21 financial reports?
22 A. Yes, we are.
23 Q. And do you --
24 A. By the SEC, yes.
25 Q. And do you participate in the preparation of

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- 1 Liggett's financial reports?
2 A. On a cursory basis, yes.
3 Q. And at the end of each calendar year, is an
4 audit done of Liggett?

5 A. That's correct.
6 Q. I'm going to hand you what has been marked as
7 Defendants' Exhibit L-4.
8 Can you tell the jury what this document is?
9 A. This is a copy of our audited financial
10 statements for the year ended December of 1999.
11 Q. Is that the most current year-end financial
12 statement for Liggett?
13 A. It's the most current audited statement, yes.
14 Q. And the jury has heard quite a bit about what
15 audited is. Who audits Liggett's financials?
16 A. PricewaterhouseCoopers.
17 Q. And Pricewaterhouse is a major accounting
18 firm?
19 A. It's one of the largest in the world, yes.
20 Q. Looking at the first page, Mr. LeBow, is this
21 how one can -- if one looked at this page, they could
22 tell that your financial statements -- that Liggett's
23 financial statements are, indeed, audited?
24 A. Yes. That's correct.
25 Q. Mr. LeBow, looking at the second page of your
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1 financial statements, Liggett's year-end December 31st,
2 1999 consolidated financial statements, what does the
3 second page show?
4 A. These are a listing of our various assets of
5 the company.
6 Q. Is this a balance sheet?
7 A. This is one-half of the balance sheet. The
8 other half is on the next page.
9 Q. Let's look at the next page.
10 This page shows liabilities and stockholders'
11 equity?
12 A. That's correct.
13 Q. Stockholders' equity is also known as net
14 worth?
15 A. That's correct.
16 Q. As of December 31st, 1999, what was Liggett's
17 stockholders' equity or net worth?
18 A. \$33,781,000.
19 Q. And that represents all of Liggett's assets,
20 minus all of Liggett's liabilities?
21 A. That's correct.
22 Q. Mr. LeBow, let's talk about how it is that
23 Liggett gets its hands on an amount like \$33 million,
24 if it needed to pay a punitive damage award.
25 A. Well, I can tell you that last fall -- we
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1 have an old, large, old factory in North Carolina. We
2 decided to build a smaller one, more compact, less
3 expensive, and we tried to arrange for about four or
4 five different banks, talking to them, a simple \$8
5 million mortgage, and every single bank turned us down.
6 So it's not possible for us to borrow any money
7 whatsoever.
8 Q. The old factory in North Carolina, is that
9 Liggett's only factory?
10 A. It's Liggett's only factory, yes. It's like
11 a hundred years old.

12 Q. How many banks did you go to?
13 A. At least four or five. I'd got one bank very
14 interested, but as they dug, they turned us down
15 completely.
16 Q. So nobody would give you a mortgage for \$8
17 million?
18 A. This is a mortgage, you understand, not a
19 loan, a mortgage on a building, a factory, and we could
20 not get it. They turned us down.
21 Q. When you apply for a mortgage, there is
22 collateral?
23 A. We were giving them the factory, the whole
24 factory and the equipment and everything else as
25 collateral, that's correct.

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1 Q. Mr. LeBow, if there was a punitive damage
2 award and you had to borrow money, would there be
3 collateral?
4 A. Available, you mean? No. There would not be
5 any collateral available.
6 The only line we have -- we have a small
7 line, a working capital line. We could maybe take some
8 money from the working capital line, somewhere in the
9 five-to-ten-million-dollar range, quickly, we could
10 maybe arrange.
11 Q. Mr. LeBow, if you can't borrow any more than
12 5 or \$10 million, what else could Liggett do to pay off
13 a judgment?
14 A. Liquidate the company; go out of business;
15 sell the assets. I don't think you could get those
16 numbers you see on the balance sheet and pay our
17 liabilities and then pay a judgment.
18 Q. Then you'd be out of business, though?
19 A. Be out of business.
20 Q. Mr. LeBow, can you explain to the jury your
21 experience over time in valuing companies?
22 A. I've been involved in investment banking and
23 buying and selling companies for about 20 years, or
24 maybe -- excuse me, 30 years. I'm getting older. I
25 don't realize how old I'm getting. And I've been, you

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1 know, through quite a few valuations, yes.
2 Q. Do you have experience in dealing with
3 companies in financial distress?
4 A. That's correct.
5 Q. I want to talk to you briefly about the
6 current value of Liggett's brands.
7 You understand that in this trial, a
8 methodology was used to value Liggett by looking at the
9 brand transaction that Liggett did with Philip Morris?
10 A. I understand that, yes.
11 Q. Let's first discuss the brand transaction
12 itself.
13 What is it that Liggett sold to Philip
14 Morris?
15 A. We had three old brands, you know, L&M,
16 Chesterfield and Lark, which Liggett owned for years,
17 50 years or more, which we sold to Philip Morris.
18 Philip Morris, back in 1978, I believe it is,

19 or '76, they bought those -- the rights to those brands
20 overseas, so they owned these brands overseas. If you
21 travel overseas, you see an L&M cigarette or
22 Chesterfield cigarette, it's not ours; it's Philip
23 Morris'. And they've been quite successful with those
24 brands overseas.

25 Q. What was the purchase price that Philip
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1 Morris paid last year for the domestic rights to the
2 L&M, Lark and Chesterfield brands?

3 A. They paid \$300 million.

4 Q. You just told the jury two minutes ago that
5 Liggett's current net worth is \$34 million, but you
6 just told them now that you got \$300 million last year
7 from this brand sale.

8 What happened to that \$300 million?

9 A. Well, if you looked at our balance sheet a
10 year ago, you'd see we had a negative net worth. All
11 that money went to pay off debt. We didn't keep any of
12 it. It went to pay old debt and old creditors to stay
13 in business. It's the first time in ten years, eight
14 to ten years, that Liggett has had a positive net
15 worth.

16 Q. It was necessary for Liggett to sell those
17 brands?

18 A. It was imperative.

19 Q. Otherwise?

20 A. Otherwise, we would have been out of business
21 last year.

22 Q. Mr. LeBow, where did the liability remain as
23 far as those brands are concerned?

24 A. With Liggett. We did not sell -- they did
25 not take on any of our liabilities. We kept them.

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1 Q. Let me ask you this: What were those -- what
2 are those brands worth to Liggett? Actually, let me
3 ask you this way: How much would Liggett pay today to
4 get those brands back?

5 A. Well, don't tell this to my ex-friend at
6 Philip Morris, but we would not pay \$300 million for
7 it. No way.

8 Q. Why would Liggett not pay \$300 million for
9 those brands?

10 A. A, we don't advertise it like they may --
11 they can advertise. Maybe they do. I don't know if
12 they do or don't advertise it. B, I don't have the
13 sales force, like Philip Morris does, of a couple of
14 thousand people to go into every store in the country,
15 so we can't build up the brands. And we don't have the
16 synergies overseas.

17 They advertise these brands extensively
18 overseas. I mean, L&M, for example, is the second
19 largest, I believe, cigarette overseas behind Marlboro.
20 So it's very important for them; not for us.

21 Q. Mr. LeBow, Mr. Szymanczyk, Philip Morris'
22 CEO, told this jury that he believed that Philip Morris
23 could achieve a 4 percent market share with those
24 brands. Do you agree with that?

25 A. I think if Philip Morris puts their

1 advertising muscle and their marketing muscle before
2 it -- behind it, yes, it's possible.

3 Q. Mr. LeBow, based on your experience in
4 valuing companies during your career, do you think it
5 would be appropriate to value Liggett's current
6 business based on the sale of premium brands?

7 A. Absolutely not. As a matter of fact, you
8 just had a chart up there showing Liggett doesn't have
9 any premium business, basically.

10 How can you take a premium number and apply
11 it to Liggett, when all we do is sell primarily discount
12 cigarettes? It makes no sense whatsoever.

13 Q. Apples to oranges?

14 A. It's worse than that, to be honest with you.

15 Q. Mr. LeBow, the jury has been told that the
16 true value of a business is defined by what a willing
17 buyer would pay a willing seller for that business.
18 Given that definition, what do you believe is the true
19 value of Liggett?

20 A. I don't think there's a willing buyer out
21 there today. I don't think any willing buyer,
22 so-called willing buyer, would step forward and buy
23 Liggett.

24 Q. Why is that?

25 A. Well, there's all of the litigation involved.

1 I know -- I've talked to many foreign tobacco
2 companies. They don't even want to come visit New
3 York, let alone buy Liggett. They won't even come to
4 the states. It's impossible. It's a complete pipe
5 dream at this stage in time.

6 Q. Mr. LeBow, is Liggett a defendant in as many
7 cases as these other defendants -- as these other
8 companies?

9 A. Mostly -- most all, but not all of them.
10 Some of the individual cases we're not named because we
11 don't -- we don't have the market share they have, is
12 the main reason for that. I think all of the class
13 actions, all of the major cases, yes, we're involved in
14 every one of those.

15 Q. Mr. LeBow, I want to talk to you about the
16 Master Settlement Agreement. Is Liggett a signatory to
17 the Master Settlement Agreement?

18 A. Yes, we are.

19 Q. And has Liggett been in compliance with the
20 advertising and marketing restrictions under the Master
21 Settlement Agreement?

22 A. We've been overcompliant. We don't advertise
23 at all. We're completely in compliance with everything
24 in that agreement.

25 Q. Mr. LeBow, last week the chief executive

1 officer of Brown & Williamson pointed out that Liggett
2 was not currently making payments under the MSA, Master
3 Settlement Agreement; is that correct?

4 A. That's correct.

5 Q. Would you explain to the jury what the deal
6 is that Liggett has under the Master Settlement
7 Agreement?

8 A. Well, ourselves, and I guess 20 other smaller
9 companies, all got the right, for whatever our volume
10 was in 1997, up to that volume, no payments would be
11 made. Above that volume, we would pay just like
12 everybody else.

13 Let me also point out to the jury that when
14 we signed this agreement, we already had settlement
15 agreements with 41 states. We had already settled with
16 41 states to pay 30 percent of our earnings to the
17 states.

18 We were pressured by the attorneys general
19 and other companies and everybody to -- nobody wanted
20 separate settlements out there -- that we should, just
21 like all of the other tobacco companies, sign the
22 Master Settlement Agreement, and we agreed.

23 Q. Mr. LeBow, why was Liggett permitted to have
24 this small-market-share exception that you have?

25 A. Like I say, it's not just us. It's us and
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1 about 20 other small companies got it.

2 In addition, the attorneys general recognize
3 that Liggett was in a precarious financial state. They
4 recognized that, 100 percent, we worked with them for
5 years, and they wanted to, you know, give us -- it's
6 called "a just reward," for having done what we did and
7 stepping up.

8 And I think if you go back in the history of
9 the Master Settlement Agreement, you would find there
10 would be no Master Settlement Agreement without the
11 moves and steps that Liggett took; and the state of
12 Florida agreed with that, and all of the other states
13 agreed with that also.

14 Q. Mr. LeBow, have you seen or have you received
15 any letters from the attorneys general setting forth
16 why it is that Liggett should get special consideration
17 under a national settlement like the Master Settlement
18 Agreement?

19 A. While the Master Settlement Agreement was
20 being negotiated, attorneys general wrote many letters
21 to Congress, to the President of the United States, as
22 a matter of fact, recommending that we get a higher
23 percentage than we eventually did. So, yes, there are
24 letters available, that attorneys general signed and
25 agreed to, and we worked with them throughout this

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1 period.

2 Q. I show you a letter marked as Defendants'
3 Exhibit L-7.

4 Mr. LeBow, have you seen this letter before?

5 A. Yes, I have.

6 Q. Mr. LeBow, this is a several-page letter
7 written by state attorneys general?

8 A. That's correct.

9 Q. How many state attorneys general?

10 A. I can count them up. 18, 20, something of
11 that nature.

12 Q. 18, 20 --
13 A. Two, four, six --
14 Q. -- signed this letter?
15 A. It's more than that. About 20, yes.
16 Q. Mr. LeBow, does this letter point out --
17 well, first of all, Mr. LeBow, who was this letter
18 written to?
19 A. Written to Mr. Bruce Lindsay, who is deputy
20 counsel to the President of the United States, who is
21 responsible for tobacco policy for the United States
22 and for the President. He worked very -- the
23 President's right arm, so to speak, in this regard.
24 Q. And what was the -- what was it that the
25 attorneys general were telling to Bruce Lindsay,
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1 counsel to the President?
2 A. They were -- the simplest thing would be to
3 read it, but basically saying, because of the things
4 we've done, you know, admitting smoking causing these
5 problems, acknowledging everything, releasing
6 documents, et cetera, et cetera, that they were
7 recommending that we, you know, be given special
8 treatment, even better than we ever got out of the MSA.
9 But, nonetheless, it was important that the person who
10 stood up and did the right thing be protected. It was
11 important to the attorneys general who are the law --
12 leading law people in each one of these states.
13 Q. Mr. LeBow, Mr. Brookes suggested that Liggett
14 now has some sort of competitive advantage, based on
15 the fact that it is not making payments under the MSA.
16 Do you think that's true?
17 A. Well, we don't compete with these people.
18 They sell premium; we sell discount. And all of the --
19 most of the discount manufacturers, they have the same
20 advantage. There's no special thing there.
21 So in the discount area, it's not true.
22 Q. Mr. LeBow, since the -- since the advent of
23 the MSA, has Liggett been able to expand its market
24 share?
25 A. No. It's about the same as it was before the
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1 MSA, approximately the same.
2 Q. If it, indeed, had such a huge competitive
3 advantage, why is it the case that Liggett has not
4 expanded its market share?
5 A. Very simply, it's just not true that we have
6 a big competitive advantage. It's totally untrue. I
7 mean, we have all these other companies that have the
8 same thing. There are 20, maybe more than that, small
9 companies, who, you know, who sell -- have the same
10 advantage we've got, the same deal on the MSA.
11 And I will point out very importantly, that
12 one of the companies who did not even sign the MSA, who
13 is making no payments under the terms of the MSA, is
14 out there selling cigarettes cheaper than anyone else
15 in the country, and these, by the way, are cigarettes
16 which are manufactured by Brown & Williamson and sold
17 by this company.
18 Q. What's the --

19 A. So they're competing with us all over, and we
20 sell for a higher price than them.
21 Q. What's the name of that company?
22 A. Star Tobacco.
23 Q. They're not a signatory to the MSA?
24 A. They're not a signatory to the MSA.
25 Q. They're not bound by the restrictions of the
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1 MSA?
2 A. They're not bound by the restrictions, and
3 they make no payments under the MSA.
4 Q. And Brown & Williamson sells them cigarettes?
5 A. Brown & Williamson manufactures cigarettes
6 for them, yes.
7 MR. SMITH: Objection, Your Honor. May we be
8 heard at sidebar?
9 THE COURT: Okay.
10 (The following proceedings were had at
11 sidebar:)
12 THE COURT: Yes, sir.
13 MR. SMITH: I'm curious on the good faith
14 basis to ask the question --
15 THE COURT: The good faith?
16 MR. SMITH: The good faith basis to ask the
17 question that Brown & Williamson is making the
18 cigarettes.
19 MR. MARKS: Why Liggett can increase its
20 market shares.
21 THE COURT: The statement is Brown &
22 Williamson sells them cigarettes.
23 MR. SMITH: My question to you is, if you
24 have a good faith basis to ask that question?
25 MR. MARKS: How do I know that?
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1 MR. SMITH: Yes.
2 MR. MARKS: It's in Star Tobacco's financial
3 statements.
4 MR. SMITH: Well, I'll check that at lunch.
5 (The sidebar conference was concluded, and
6 the following proceedings were held in open court:)
7 THE COURT: Do you have much more to go?
8 MR. MARKS: I think I have five minutes.
9 BY MR. MARKS:
10 Q. Mr. LeBow, this jury has rendered two
11 verdicts unfavorable to tobacco companies in the last
12 year. Have you read these verdicts?
13 A. Yes, I have.
14 Q. The jury found that -- this jury found that
15 smoking causes disease and smoking is addictive and
16 that the tobacco companies' conduct over the years was
17 fraudulent and improper.
18 Mr. LeBow, as we sit here today, do you
19 believe your company, Liggett, has gotten the message
20 from this jury?
21 A. I think I got it long before the jury got it,
22 and I agree with the jury. I have no comment -- no
23 complaints about what the jury found.
24 Q. Mr. LeBow, in his closing in Phase I of this
25 trial, Mr. Rosenblatt referred to your testimony during

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1 Phase I as a breath of fresh air, but then explained
2 that you were not his hero, because Liggett still sells
3 cigarettes, and the right thing for you to do is to get
4 out of the business.

5 What is your reaction to that statement?

6 A. Well, I think, first of all, if we got out of
7 the business, every board room of every tobacco company
8 would be so happy throughout the United States --

9 MR. REID: Objection. Move to strike.

10 A. -- number one.

11 THE COURT: Overruled.

12 A. Number two, it wouldn't -- it wouldn't help
13 anything, vis-a-vis the customers, since we only sell
14 discount cigarettes. They'll just go buy them from
15 some other company. So that would not accomplish
16 anything.

17 And I believe -- I honestly believe that it's
18 very important that we stay in business; that we be the
19 maverick of the industry; that we beat the industry up
20 and make them do the right thing. After all, who else
21 is putting "Smoking is addictive" on their packs? Who
22 else is disclosing the ingredients? Who else is going
23 to be in Washington fighting for FDA approval and
24 legislation?

25 There are many, many things to be done still

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1 on this fight on tobacco. This is one phase of it.
2 Here, in this court, is one phase, but there's a lot
3 more to do. We have not finished this war, and I want
4 to be right there in the middle of it, fighting for the
5 right thing.

6 Q. Mr. LeBow, when you testified here during
7 Phase I of the trial, did you meet any of the three
8 class representatives: Ralph Della Vecchia, Frank
9 Amodeo --

10 A. Yes. I did say hello to them.

11 Q. -- Mary Farnan?

12 A. And I met some of the other plaintiffs who
13 are in the audience also, and I was very happy they
14 came up and they all shook my hand and thanked me for
15 my testimony. That made me feel very good.

16 Q. Is there anything that you'd like to say to
17 these three plaintiffs today?

18 A. I just want to say one thing. There's
19 nothing that I can do that will bring back your loved
20 ones. That can't be done. There's nothing I can do to
21 bring back your health. But I promise you, I will
22 continue to fight this war and to win this war on
23 tobacco.

24 There's a very important thing that we're
25 doing right now. Dr. Burns, who I have a lot of

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1 respect for, brought to my attention, about three
2 months ago, a process --

3 MR. WEBB: Your Honor, object to Dr. Burns'
4 conversation with him.

5 THE COURT: Yes. I'm really not sure where
6 we're going with this, so it's improper about his
7 testimony. Dr. Burns may or may not be here. He can
8 testify about that.
9 THE WITNESS: Okay.
10 MR. MARKS: Fine, Your Honor. I'll move on.
11 BY MR. MARKS:
12 Q. Mr. LeBow, last question. What is your
13 vision for the future for Liggett?
14 A. As I said before, I want to help solve the
15 tobacco problem in this country; have Liggett be in the
16 middle of the fight and the war.
17 One of the important things we're doing right
18 now, as a matter of fact, is a few months ago we made
19 an agreement with Cornell University Medical School.
20 You may have seen a big article yesterday in the New
21 York Times, where Cornell --
22 THE COURT: They're not allowed to read that
23 stuff.
24 THE WITNESS: Sorry.
25 A. Anyway, there was a big article yesterday in
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1 the New York Times, where Cornell has come up with a
2 method of screening for lung cancer. As you know,
3 today, lung cancer -- over 80 percent of the people in
4 this country die from lung cancer when they're
5 diagnosed with it. I want to change that to 80 percent
6 live, and so does Cornell.
7 We agreed with Cornell, we're going to do
8 everything we can to raise money for them to get this,
9 what's called CT spiral scanning, going. After all, I
10 believe the tobacco companies have caused most of this
11 problem; I believe it's our responsibility to get the
12 money for Cornell to try and solve this problem.
13 Liggett just went and committed millions of
14 dollars to Cornell for this, and we're going to work
15 very hard to get them the money to help to solve this
16 problem. That's the kind of thing, in addition to what
17 we're doing in the legal front, that we want to be
18 involved with in the future.
19 MR. MARKS: That's all I have.
20 THE COURT: Thank you very much.
21 We'll take a break at this point and come
22 back in a few minutes.
23 You know the rules about no conversation.
24 (A brief recess was taken.)
25 THE COURT: Have a seat. Get the jury.
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1 THE BAILIFF: Bringing in the jury. Jurors
2 entering the courtroom.
3 (The jury entered the courtroom.)
4 THE COURT: Have a seat, folks.
5 All right. Cross.
6 MR. ROSENBLATT: Good morning, ladies and
7 gentlemen.
8 THE JURY PANEL: Good morning.
9 CROSS EXAMINATION
10 BY MR. ROSENBLATT:
11 Q. Good morning, Mr. LeBow.

12 A. Good morning, Stanley.
13 Q. The documents that you referred to, where you
14 gave an assignment to your attorneys to review a lot of
15 tobacco documents over -- over a period of years,
16 obviously those documents were generated and written
17 before you ever got into the tobacco business, for the
18 most part, correct?
19 A. That's correct.
20 Q. Okay. Is it fair to say that when your
21 attorneys carried out your assignment, the documents
22 showed basically, overall, a pattern of misconduct on
23 the part of your company and other companies?
24 MR. REID: Objection, Your Honor. It's
25 repetitious.

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1 THE COURT: Well, let's go sidebar and talk
2 about this.
3 (The following proceedings were had at
4 sidebar:)
5 MR. WEBB: Your Honor, the whole purpose of
6 why Mr. Rosenblatt called Mr. LeBow in his case in
7 Phase I was to prove that our misconduct was a key part
8 of what Mr. LeBow testified to, and he explored that
9 forever during Phase I, and that's why he should not be
10 allowed to -- we wanted to come to a sidebar quickly
11 because he worked it right into the first question,
12 about our misconduct; and you clearly -- you limited
13 Mr. Marks from talking about Liggett's conduct, which
14 he did, and which Mr. LeBow, by and large, has not
15 done, and Mr. Rosenblatt is going way beyond the scope
16 of direct now.
17 So my objection is two-fold. It's beyond the
18 scope of direct, but maybe more importantly, it's
19 absolutely repetitive of Phase I, and he should not be
20 allowed to do that. And the rest of us have not been
21 allowed to do that.
22 MR. ROSENBLATT: He talked about the
23 documents on direct, and all I'm going to say is: You
24 had nothing personally to do with these documents.
25 You've apologized for them, and that's it.

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1 THE COURT: But that's not what you asked
2 him.
3 MR. ROSENBLATT: That's a lead-in. That's a
4 lead-in. I've got a --
5 THE COURT: Well, I don't want to go and
6 rehash this issue.
7 MR. ROSENBLATT: I'm not.
8 THE COURT: It goes to the first verdict the
9 jury has already made a decision on.
10 MR. ROSENBLATT: Absolutely.
11 THE COURT: He said that he was aware of the
12 decision, what this issue was. So I agree with counsel
13 on not going back and rehashing.
14 MR. ROSENBLATT: I'll just go directly to the
15 "apologize" question.
16 THE COURT: He did apologize.
17 MR. REID: He already did. It's repetitive.
18 THE COURT: He's already come out and said he

19 was sorry to everybody for what he did.
20 MR. ROSENBLATT: Not for what he did.
21 THE COURT: I mean, for what happened to
22 them. So what do you want to show?
23 MR. ROSENBLATT: I would have been ten
24 questions down the road. I was going to hardly dwell
25 on it.

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1 THE COURT: I understand that. But the way
2 you jumped into it is a complete lead-in to fault.
3 All right. What you want to do is say:
4 Look, all that happened before you got there, so if you
5 apologized to whoever, this is what someone else did
6 and not what you personally did?
7 MR. ROSENBLATT: Right.
8 THE COURT: Well, Brookes said the same
9 thing.
10 MR. WEBB: He has a right to apologize for
11 what his company did. What I'm concerned about --
12 THE COURT: It's hearsay as to what Brookes
13 said. Brookes said: I'm not going to apologize
14 because I didn't do anything wrong.
15 MR. WEBB: That's Mr. Schindler.
16 THE COURT: Well, Brookes said the same
17 thing: I didn't do anything wrong; somebody else did
18 something wrong, but I never did anything wrong, so I
19 can't apologize for what other people have done.
20 If he wants to apologize for what the company
21 did, that's fine.
22 MR. ROSENBLATT: That's it.
23 THE COURT: If he doesn't want to apologize,
24 that's fine, too. But not casting nets out,
25 accusations against the other people.

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1 (The sidebar conference was concluded, and
2 the following proceedings were held in open court:)
3 BY MR. ROSENBLATT:
4 Q. So, Mr. LeBow, even though you had no
5 personal involvement with the writing or generation of
6 those documents, you've apologized for what your
7 company did before you ever bought the company?
8 A. I think the company did, you know, the wrong
9 thing, you know, years ago. I guess I'm a little bit
10 proud about the fact that we never signed -- again,
11 these are back in the '50s or '60s --
12 MR. REID: Objection, Your Honor.
13 THE COURT: I'm not sure where he's going
14 here.
15 MR. MARKS: He was responding to a question.
16 THE COURT: I'm not sure where he's headed.
17 It's not responsive to the question.
18 Go ahead.
19 I'll sustain the objection.
20 MR. ROSENBLATT: So I'll go on to the next
21 question. Okay.
22 BY MR. ROSENBLATT:
23 Q. You mentioned that Liggett does absolutely no
24 advertising?
25 A. That's correct.

1 Q. Do you do any promotion?
2 A. We did coupons off, like all of the other
3 competitors, on our discount cigarettes. Yes, in that
4 regard, we do.
5 Q. Do you have a database?
6 A. No, not to my knowledge.
7 Q. In other words, the jury has learned that the
8 other companies have millions of people on a database,
9 and they periodically communicate with them. Does
10 Liggett do that?
11 A. No, we do not.
12 Q. Now, I just want to make absolutely clear,
13 that in terms of the various discussions that you have
14 had with attorneys general over the years -- and I
15 believe your first settlement was in March of 1996 --
16 A. Correct.
17 Q. -- and then you made a broader settlement
18 with more attorneys general in March of '97?
19 A. And then again in 1998, also.
20 Q. Okay. I've never been involved in any of
21 those negotiations, correct?
22 A. That's correct. That's correct.
23 Q. Okay. The first time you and I ever met was
24 when I took your deposition years ago?
25 A. That's correct.

1 Q. Now, in terms of this proclamation -- you've
2 got it in front of you. Okay.
3 A. I have it.
4 Q. This is where -- this is where I want to go,
5 this paragraph down here, just before the "therefore"
6 clause.
7 A. Okay.
8 Q. "Whereas, Bennett's actions earned him scorn,
9 ridicule and condemnation from other tobacco
10 executives, but established him as a valuable ally in
11 the war against big tobacco."
12 Is that accurate, that when you admitted
13 causation, you admitted addiction, you admitted fraud,
14 that as far -- the reaction of the other companies was
15 scorn, ridicule and condemnation?
16 MR. REID: Objection.
17 MR. WEBB: Can we have a sidebar, Your Honor?
18 THE COURT: I will only allow the question as
19 to what he believes, his perception of the reaction.
20 A. Absolutely. As a matter of fact, I was
21 accused of being a Mafia turncoat. My reaction to that
22 was, I don't know, "Part of the Mafia?" So all kinds
23 of things were scorned on me.
24 BY MR. ROSENBLATT:
25 Q. I want to ask you a question about one of the

1 charts that was put up, and I'm -- now, I thought -- I
2 thought you told us earlier in your testimony that your
3 one premium brand, Eve, had about 6 percent of the
4 market, and according to this chart, I don't know if

5 that refers only to Eve. You've got twice that much, a
6 little over 12 percent in premium brands?
7 MR. MARKS: Your Honor, I think he misstates
8 the facts on the 6 percent of the market.
9 THE COURT: That's true. If --
10 MR. ROSENBLATT: Well, correct me if I'm
11 wrong.
12 THE COURT: If he has --
13 MR. ROSENBLATT: I may have gotten it wrong.
14 A. I said about 10 percent. I was off. It's
15 12.6. But 10 percent of what Liggett sells, not of the
16 market.
17 BY MR. ROSENBLATT:
18 Q. No. I understand.
19 A. Of our market share.
20 Q. Of what Liggett sells?
21 A. Yes. I said around 10 percent. I was off.
22 It says 12 percent.
23 Q. Does that 12.60 only represent Eve?
24 A. Yes.
25 Q. And everything else would be what you've
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1 explained --
2 A. Correct.
3 Q. -- the discount brands, what you manufacture
4 for other people?
5 A. Yes.
6 Q. Okay.
7 A. I will point out, that's for a quarter. If
8 you look for a year, you'll find it to be a little bit
9 less. That's only for one quarter.
10 Q. Then I want to show you this other chart:
11 Liggett Sales Volume Breakdown, First Quarter, 2000.
12 I just want to be sure I'm understanding the
13 figure at the bottom. Does that mean that even with
14 the very low share of the market that Liggett has
15 compared to the other companies -- you are still
16 selling 1,200,000,000 cigarettes per year?
17 A. Per quarter. We sell more than that per
18 year.
19 Q. Per quarter?
20 A. Yes. About five and a half billion per year,
21 that's correct.
22 Q. Okay. You made the statement that kids want
23 the premium brands; they're not interested in the
24 discount brands?
25 A. Correct.

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1 Q. And you also made the statement that
2 advertising is not right; the reason you don't
3 advertise is because it's not right.
4 Now, in what sense did you mean that
5 advertising is not right?
6 A. Well, I mean, of course they've changed some
7 of the advertising, but some of the advertising has
8 been, as we know, recently --
9 MR. REID: Objection, Your Honor, as to other
10 companies' advertising.
11 MR. ROSENBLATT: I'm asking --

12 THE COURT: He hasn't identified anybody or
13 anything. He said other advertising. It could be for
14 anything at this point.

15 Overruled.

16 A. Other advertising, kids could mistakenly see
17 the advertising. It's kind of hard to keep it 100
18 percent away from children. And we just made a
19 conscientious decision that advertising, we don't want
20 to do.

21 I mean, I have a goal for this company, and
22 that's one of them, is to get rid of advertising.

23 BY MR. ROSENBLATT:

24 Q. Do you believe that advertising of
25 cigarettes, in some cases, causes nonsmoking kids to

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1 become smokers, because they're attracted to the
2 advertising?

3 MR. REID: Objection. It's outside the
4 scope. It's also beyond any expertise.

5 THE COURT: Well, no. He made mention that
6 one of the reasons he doesn't want to do it is he
7 doesn't want to entice people, so with that statement
8 being made, I guess it's overruled.

9 A. I don't think you can help it. I think,
10 absolutely, that can help.

11 BY MR. ROSENBLATT:

12 Q. The cigarette business is obviously, to
13 outsiders, a complicated business.

14 For example, you manufacture cigarettes for
15 customers, such as Speedway America. What is the -- in
16 other words, they're not your cigarettes, they're not
17 your brands; you're manufacturing it for a customer,
18 correct?

19 A. Correct.

20 Q. What's your financial arrangement in that
21 kind of a situation?

22 A. Our only financial arrangement, we charge
23 them a fixed price for the cigarettes.

24 Q. What is the fixed price you charge?

25 A. I don't know offhand. It's complicated.

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1 There's taxes involved, promotions, et cetera, et
2 cetera, but it's approximately -- competitive with what
3 other discount cigarettes cost.

4 Q. And did I understand you correctly that
5 Liggett is involved with about 300 brands, total?

6 A. We have -- yes, over time, yes, about 300
7 different, small, very small brands. One brand could
8 be just for one supermarket chain, for example.

9 Q. You mentioned on direct examination where you
10 couldn't get money from banks to build this new
11 factory?

12 A. That's correct.

13 Q. But you are building the new factory?

14 A. That's correct.

15 Q. How close to -- is it to completion?

16 A. It's about five months away from being
17 completed.

18 Q. And what will be its production rate when

19 it's done?
20 A. Same as Liggett's production rate. You know,
21 five billion, five and a half billion a year.
22 Q. And, of course, you're paying for the
23 building of the new factory on money that's coming in?
24 A. That's correct.
25 Q. And this whole -- this whole concept, you
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1 were asked a few questions about, you know, a punitive
2 damage award and you'd go out of business. You
3 wouldn't go out of business if there was a payout
4 arrangement?
5 MR. MARKS: Objection.
6 MR. REILLY: Objection, Your Honor.
7 BY MR. ROSENBLATT:
8 Q. Isn't that true?
9 THE COURT: Sustained.
10 BY MR. ROSENBLATT:
11 Q. You were also asked some questions about
12 finding a willing buyer, and I think you made the point
13 that no one would be interested in buying Liggett
14 today.
15 A. Correct.
16 Q. You found a willing buyer for three brands
17 that had one-fifth of 1 percent of the market; you just
18 got lucky?
19 A. No. It was a very unique buyer. I mean,
20 Philip Morris is unique in the fact they had the brands
21 overseas. It made sense to round out their portfolio.
22 They're the only ones who felt they could do something
23 with it and expand the production. You wouldn't find
24 another person like that; that's for sure.
25 Q. Well, Philip Morris had the brands
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1 Chesterfield, L&M and Lark, internationally, since the
2 late '70s?
3 A. Correct.
4 Q. So they waited 20 years, you know, to
5 purchase those three brands domestically?
6 A. Well, we had some conversations with them,
7 you know, about five, six years ago, about the same
8 thing; and I think, you know, they just saw that we
9 got -- we were in a weak financial position, and they
10 decided, you know, to make an offer.
11 Q. Now, Mr. LeBow, I don't -- I do not question
12 the fact that you are sincere when you apologized to
13 Mary Farnan and Frank Amodeo and the husband of Angie
14 Della Vecchia, but don't you recognize that by selling
15 five billion cigarettes a year, you're creating --
16 you're helping to create new victims?
17 A. Well, Mr. Rosenblatt, I've analyzed that in
18 my mind, and as I said to you before, if we were to
19 close our factory, those five billion cigarettes will
20 just be purchased by another company; and I think it's
21 much more important that I be involved in this industry
22 in order to help, you know, plaintiffs like yourself to
23 get this industry to do the right thing. That, to me,
24 is much more important than just going out of business,
25 which will accomplish absolutely nothing, vis-a-vis

1 my -- our customers.

2 Q. Okay. So what you're saying is: Look, if I,
3 Bennett LeBow, got out of the business, if Liggett got
4 out of the business, there wouldn't be one less
5 cigarette company around; someone else would just step
6 in?

7 A. Absolutely true.

8 Q. Okay. Now, you've had -- you know, when you
9 talk about helping plaintiffs' lawyers, you've had
10 formal agreements with attorneys general where you've
11 agreed to help them in litigation, and you have, in
12 fact, helped them by testifying. You and I have never
13 had such a formal agreement, have we?

14 A. No. We never had a formal agreement. But I
15 must point out, I did help, you know, this case also.
16 I did help this case also, without any formal
17 agreement, that's correct.

18 Q. Well, you were called as a witness, and you
19 told the truth?

20 A. Correct.

21 Q. You said you believed it's addictive and it
22 causes lung cancer?

23 A. Correct.

24 Q. And you had made those statements ages ago?

25 A. Correct.

1 Q. Mr. LeBow, you have said publicly that you
2 believe children are the foundation of the tobacco
3 business, and if the companies are really sincere and
4 they did not market and sell --

5 MR. REID: Objection, Your Honor. May we
6 approach on this?

7 THE COURT: Let me see what he's talking
8 about here.

9 All right. Let's talk about it.

10 (The following proceedings were had at
11 sidebar:)

12 MR. REID: Your Honor, number one, he's
13 talking about the companies; number two, it's one of
14 Mr. LeBow's speeches that he's given, basically
15 lambasting the industry.

16 THE COURT: Okay.

17 MR. REID: That's objectionable; that you
18 previously said Mr. LeBow shouldn't be able to testify
19 about bad acts of the other defendants, because he
20 already testified in Phase I, and it's beyond the scope
21 and limitations of his testimony today. This speech
22 just has --

23 MR. ROSENBLATT: I'm not reading from a
24 speech.

25 THE COURT: I don't know what the speech is.

1 MR. ROSENBLATT: I'm not reading from a
2 speech.

3 MR. REID: It sounds like a speech. I guess
4 I should ask, "Where did it come from?" as I was asked

5 yesterday.
6 THE COURT: Let's see what the question is.
7 MR. REID: "You have said publicly" --
8 MR. WEBB: Your Honor, there's nothing on
9 direct examination about children being the foundation
10 of the tobacco business. This clearly is a question in
11 which he wants to attack the other tobacco companies,
12 which clearly is Phase I issues and not --
13 THE COURT: Okay. Where are you going with
14 this?
15 MR. ROSENBLATT: He's basically made the
16 statement that children are the foundation of the
17 tobacco business and if we really didn't go after
18 children, we'd all be out of business in 25 years.
19 THE COURT: Well, that's a little heavy.
20 Yes. But that didn't come up on direct.
21 MR. ROSENBLATT: It didn't come up -- it
22 didn't come up, you know, specifically on direct, but
23 his testimony is --
24 THE COURT: That's what you'd like to say,
25 I'm sure.

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1 MR. ROSENBLATT: He said it.
2 THE COURT: I'm not so sure it's appropriate
3 at this point, because we didn't get into the issue of
4 youth targeting.
5 MR. ROSENBLATT: Well, it's such a big issue
6 to the defense in the case. That's probably been their
7 number-one issue, that they're so sincere about not
8 marketing to the youth, and here is the CEO of another
9 tobacco company, that, in effect, he says: If they
10 don't get youth, they put themselves out of business.
11 THE COURT: We didn't want to pit one against
12 the other, is where the problem is.
13 I'll sustain the objection.
14 (The sidebar conference was concluded, and
15 the following proceedings were held in open court:)
16 BY MR. ROSENBLATT:
17 Q. You recognize, Mr. LeBow, that over the
18 years, you've changed your position on issues of
19 causation and addiction?
20 A. Absolutely.
21 Q. Now, you would agree -- what do we mean by --
22 when we talk about accounting and we use the expression
23 GAAP, what does that mean?
24 A. That's generally accepted counting
25 principles.

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1 Q. Okay. Now, you would agree that the GAAP
2 accounting number and fair market value will give you
3 completely different numbers?
4 A. They give you higher or lower, yes.
5 Q. Okay. And you will agree that a company
6 could have a net capital deficiency of \$488 million,
7 and yet be valued at \$100 million?
8 A. It's possible.
9 Q. Well, that was the situation, you know, with
10 your company at one time?
11 A. That's correct.

12 Q. And nobody but accountants really understand
13 this, how a company can appear to be in the hole on one
14 page, and on the other page, you know, have a hundred
15 million dollars?
16 A. I don't think it's just accountants. I think
17 investment bankers and everyone else understands this.
18 Financial experts understand this.
19 Q. Okay. Financial experts, but not regular
20 people?
21 A. It's difficult, but it could be explained to
22 them -- could be explained easily.
23 Q. Mr. LeBow, you receive a salary from Liggett?
24 A. No, I do not.
25 Q. Do you receive a salary from Brooke?
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1 A. No, I do not.
2 Q. Who do you receive a salary from?
3 A. From two companies: From Vector Group and
4 from New Valley Corporation.
5 Q. Well, Brooke became Vector Group?
6 A. No. But, you know, Vector took over Brooke,
7 that's correct.
8 Q. Okay. So what salary do you get from Vector?
9 A. About two and a half -- \$2.2 million a year.
10 Q. Do you spend more time on Liggett business
11 and interests than any of your other ventures?
12 A. These days, I do, yes. It wasn't true in the
13 past, but it is true now.
14 Q. You're not going around testifying in cases
15 other than tobacco?
16 A. No.
17 Q. Now, at one time you had 11 million shares of
18 stock in Brooke?
19 A. Correct.
20 Q. You still do, or in Vector now?
21 A. Yes, about that. It's about that, yes.
22 Q. What is that worth?
23 A. It's trading today for about \$16 a share.
24 Q. So it would be 11 million times 16?
25 A. That's correct.

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1 MR. MARKS: Your Honor, may I be heard on
2 this?
3 THE COURT: If you'd like.
4 (The following proceedings were had at
5 sidebar:)
6 THE COURT: Yes?
7 MR. MARKS: Your Honor, the defendants in
8 this case are Liggett Group and Brooke Group Holding.
9 THE COURT: Yes.
10 MR. MARKS: He's now talking about another
11 entity, Vector Group, which is not a defendant in this
12 case.
13 THE COURT: Yes.
14 MR. MARKS: So the value of Vector Group has
15 nothing to do with Liggett or Brooke Group.
16 THE COURT: Nor does the salary for Vector,
17 but where were you? It's already out.
18 MR. MARKS: I just --

19 THE COURT: A little bit too late.
20 You can't go any further. I agree with him.
21 MR. ROSENBLATT: I simply -- I'm not going to
22 ask numbers. I want to ask him when Vector was formed.
23 THE COURT: That's not a problem. Okay.
24 (The sidebar conference was concluded, and
25 the following proceedings were held in open court:)
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1 BY MR. ROSENBLATT:
2 Q. Mr. LeBow, what was the point in changing
3 Brooke to Vector? Was that just a name change, or did
4 it have a particular business reason?
5 A. The primary business reason is, I testified,
6 Liggett and Brooke found it impossible to borrow money
7 of any sort, and Vector's involved in many other
8 activities, primarily real estate and investment
9 banking. We have a large investment banking firm in
10 New York.
11 So we wanted to have another company that we
12 could, you know, put the tobacco in one element of the
13 company and the other company separate, so that we
14 could go borrow money there. So primarily for business
15 reasons this was done.
16 Q. So that Vector -- by the way, what are you,
17 in connection with Vector?
18 A. I'm chairman and CEO.
19 Q. Chairman and CEO. So you're the number-one
20 person --
21 A. That's correct.
22 Q. -- with Vector, just as you were the
23 number-one person with Brooke?
24 A. That's correct.
25 Q. So Vector can borrow money?

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1 A. We believe they can, yes.
2 Q. When was Vector formed?
3 A. About six months ago, eight months ago,
4 something of that nature.
5 Q. Does that mean as a --
6 A. Actually -- excuse me -- about a year ago.
7 About a year ago.
8 Q. Does that mean, as a practical matter, that
9 Brooke no longer exists?
10 A. No. Brooke still exists. It holds its
11 tobacco just in Liggett.
12 Q. So what is the relationship between Vector
13 and Brooke?
14 A. Vector owns Brooke and Brooke owns Liggett.
15 Q. And Brooke owns Liggett. So that's the chain
16 of that?
17 A. That's right.
18 Q. Now, I believe Mr. -- I just want to be sure
19 what we're looking at here. I believe Mr. Marks showed
20 you this document: Liggett Group, Inc. consolidated
21 financial statements as of December 31, '99.
22 A. That's correct.
23 Q. And this is Liggett Group, Inc. consolidated
24 financial statements, March 31, 2000.
25 A. Correct.

1 Q. So this obviously is later than that?
2 A. Correct.
3 Q. Okay.
4 A. But that one is not audited; this one is.
5 Q. When will this be audited, the end of the
6 year?
7 A. End of the year.
8 Q. Now, according to this document --
9 THE COURT: Which document?
10 MR. ROSENBLATT: I'm going to identify it
11 now.
12 BY MR. ROSENBLATT:
13 Q. Liggett Group, Inc. consolidated financial
14 statements, and the date is March 31, 2000. And this
15 has an exhibit number, 99 --
16 MS. LUTHER: No.
17 MR. ROSENBLATT: That's something different?
18 MS. LUTHER: Yes. If you turn the document
19 over on the back page, one of the corners, there should
20 be a --
21 MR. MARKS: It doesn't have an exhibit
22 number.
23 MR. ROSENBLATT: Well, you know, I'll put it
24 in evidence. But let me just ask a question about it,
25 first.

1 BY MR. ROSENBLATT:
2 Q. What does this statement mean, on Page 15 of
3 the document I just referred to: "Liggett has no
4 payment obligations under the MSA, the Master
5 Settlement Agreement, unless its market share exceeds a
6 base share of 125 percent of its 1997 market share, or
7 approximately 1.65 percent of total cigarettes sold in
8 the United States"?
9 That's an accurate statement?
10 A. That's correct.
11 Q. And you haven't reached that level yet?
12 A. No. Far below it.
13 Q. Okay. And the document that I'm referring to
14 now is a document which was put in evidence on direct
15 examination: Liggett Group, Inc., Consolidated
16 Financial Statement Ending December 31, 1999.
17 And on Page 8 -- do you have that in front of
18 you?
19 A. Yes, I do.
20 Q. Page 8, the top paragraph: "Liggett Group,
21 Inc. is a wholly-owned subsidiary of Brooke Group
22 Holding, Inc. Brooke Group Holding is a wholly-owned
23 subsidiary of BGLS, Inc., all of whose capital is owned
24 by Brooke Group, Limited.
25 "Liggett is engaged primarily in the

1 manufacture and sale of cigarettes primarily in the
2 United States."
3 Now, in this paragraph, Vector is not
4 mentioned. Vector was not formed yet? Or -- in terms

5 of these relationships -- let me put it up on the -- I
6 just read from, you know, what's yellowed up there.
7 A. I guess -- I'm strictly guessing, but I
8 believe the rule is you just go one level up. Vector
9 owns BGLS, is where it is. It's just an intermediate
10 holding company. The way it really works is Vector
11 owns BGLS, BGLS owns Brooke, Brooke owns this, and so
12 forth. And it's effectively the way I told you,
13 Mr. Rosenblatt.

14 Q. Okay.

15 A. There are some intermediate subsidiaries
16 involved, but it has no meaning, from a practical point
17 of view.

18 Q. What is the business point of these holding
19 companies, whether intermediate or parent?

20 A. There's a lot of business reasons for it.
21 For borrowing purposes, like I said; accounting
22 purposes, to have separate accountings to know how much
23 money the companies are making or losing. I mean,
24 every major corporation has separate subsidiaries, if
25 their businesses are different. There's a myriad of

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1 reasons why that's done.

2 Q. Now, you mentioned on direct examination that
3 you've been involved in investment banking for some 20
4 years. And, again, this is a term that people not
5 involved on Wall Street or the world of finance
6 constantly hear about, but I venture to say it's not
7 really widely understood.

8 So what is an investment -- my understanding
9 is he puts deals together; raises money?

10 A. That's a simple solution -- explanation.
11 That's correct. That's basically it.

12 Q. But is it fair to say that the most
13 successful investment banking firms on Wall Street, the
14 difference between them and banks and other people that
15 put deals together is the numbers; they're involved in
16 the billions, many times?

17 A. No. It's a different kind of money. A bank
18 will only do very secure, collateralized money, raise
19 money that way; and investment banks could raise --
20 they do corporate bonds, sell stocks. Banks don't sell
21 stocks, for example; that's a major difference.
22 Investment banks will sell stock or equity in the
23 company. So there are major financial differences
24 between the two.

25 Q. And on this document, the Liggett Group, Inc.

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1 consolidated financial statements ending December 31,
2 1999, look at Page 22, and this says the same thing
3 that I read to you from the later document, about
4 Liggett having no payment obligation under the MSA,
5 unless its market share exceeds a base share of 125
6 percent.

7 That's what we read earlier?

8 A. Yes. Sure.

9 Q. Okay. Now, here is a Brooke Group, Limited
10 form 10-K for the fiscal year ended December 31, 1998,
11 filed with the Securities and Exchange Commission.

12 And that's something you do every year?
13 A. That's correct.
14 MR. MARKS: Do you have a copy of that for
15 us?
16 MR. ROSENBLATT: I'm going to Page 1.
17 BY MR. ROSENBLATT:
18 Q. And, Mr. LeBow, on Page 16 of this document,
19 it simply says: "The company is controlled by Bennett
20 S. LeBow, the chairman and chief executive officer of
21 the company, BGLS, and New Valley, who beneficially
22 owns approximately 43 percent of the company's common
23 stock."
24 Is that still true?
25 A. Approximately true, yes. I think it's a
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1 little less now, but it's true.
2 Q. Even with respect to your -- the one premium
3 brand you have left, Eve, Philip Morris owns Eve
4 internationally?
5 A. Correct.
6 Q. How long have they owned Eve internationally?
7 A. Same time I think they've owned the other
8 brands, since 1970s sometime.
9 Q. When you bought Liggett in 1986, did Liggett
10 have Eve as a premium brand at that time?
11 A. Yes.
12 Q. When you sold the three brands to Philip
13 Morris for \$300 million, you negotiated directly with
14 Mr. Szymanczyk of Philip Morris, correct?
15 A. Correct.
16 Q. You thought it was a fair price?
17 A. Correct.
18 Q. Even though I believe the year before the
19 deal was made, you figured those three brands brought
20 in about 25 or \$30 million?
21 A. Correct.
22 Q. And then you used a multiple of ten times,
23 about, to reach the \$300 million, and that seemed, from
24 a business standpoint, fair?
25 A. Correct.

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1 Q. You also -- who owns the factory in Russia?
2 Does Liggett own that or --
3 MS. LUTHER: Your Honor --
4 MR. MARKS: Your Honor, could we be heard on
5 this?
6 THE COURT: All right.
7 (The following proceedings were had at
8 sidebar:)
9 MR. MARKS: Your Honor, the Russian factory,
10 Professor Mundstock testified during this phase of the
11 trial that that's a completely separate entity, and he
12 would not review that in any sort of valuation for
13 Brooke. Different brands.
14 THE COURT: Who?
15 MR. MARKS: Professor Mundstock.
16 THE COURT: Who owns it?
17 MR. MARKS: Vector owns it.
18 MR. ROSENBLATT: That's all I really want to

19 establish.
20 MR. MARKS: But if he goes beyond that --
21 MR. ROSENBLATT: I'm not going to go beyond
22 that. I may ask the capacity.
23 THE COURT: This is like AT&T?
24 MR. MARKS: He's not asking about capacity.
25 It has nothing to do with this case.
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1 MR. REID: Actually, it does, Your Honor. It
2 does.
3 THE COURT: You plan on talking about it?
4 MR. REID: I planned on discussing it on
5 cross. You need to hear the foundation.
6 MR. MARKS: I appreciate you letting me know
7 before you get into it.
8 MR. ROSENBLATT: Could we take a little --
9 it's not really --
10 THE COURT: How much longer?
11 MR. ROSENBLATT: Because I'll look it over
12 with my stuff and pare it down probably after lunch.
13 THE COURT: We'll take a lunch break now.
14 MR. ROSENBLATT: I'll be less -- I'm sure
15 I'll be less than 40 minutes.
16 THE COURT: Okay.
17 MR. REID: About 1:30?
18 THE COURT: Yes. We can break.
19 You want to get the question asked first?
20 MR. ROSENBLATT: Okay.
21 THE COURT: All right.
22 (The sidebar conference was concluded, and
23 the following proceedings were held in open court:)
24 BY MR. ROSENBLATT:
25 Q. Which of the entities, Mr. LeBow, owns the
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1 cigarette manufacturing plant in Russia?
2 A. Vector Group, through BGLS.
3 Q. L&M is one of the biggest brands in Russia,
4 isn't it?
5 A. It's not my brand.
6 Q. I know.
7 A. It's one of the biggest brands in Russia,
8 used to be.
9 Q. Okay.
10 A. 30 years ago.
11 MR. ROSENBLATT: We'll take our lunch break
12 now.
13 THE COURT: Okay. We can take our lunch
14 break at this point. Come back at 1:30, folks. Same
15 rules apply.
16 (The jury exited the courtroom.)
17 THE COURT: All right. We'll be in recess.
18 (A recess was taken at 12:05 p.m.)
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